ĀJNAVALKYA SMRITI

VYAVAHĀRA ADHYĀYA

ith the commentary, Mitākṣarā and the gloss of Bālambhaṭṭa.

DĀYABHĀGA

THE LAW OF INHERITANCE

TRANSLATED BY

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FASCICULUS I.

3940

PUBLISHED BY

Dr L. M. BASU, M B (Calc)

At the Panini Office, Bhuvaneswari Asrama 38-40 Bahadurganj
Allahabad City.

Price Rs. 3.

...es 1—128 printed by Pandit Lakshmi Narain Shukla at the Union Press Allahabad
Cover printed at the Modern Printing Works Allahabad



YÂJṄAVALKYA SMṚITI.

WITH MITÂKṢARÂ

THE LAW OF INHERITANCE.

CHAPTER I. Sec. I

प्रमाणं मानुषं दैवमिति भेदेन वर्णितम् । अधुना वर्ण्यते दायविभागोयोगमूर्तिना ॥

प्रमाणम् pramânam, evidence , मानुषम् mânuṣam, human ; दैवम् daivam divine , इति iti, thus, with these , भेदेन bhedena, with distinctions , वर्णितम् varṇitam, has been explained , अधुना adhunâ, now , वर्ण्यते varṇyate, is pro pounded , दायविभाग dâya vibhâgah, partition (विभाग) of heritage (दाय) , योगमूर्तिना yoga mûrtinâ, by the image of holiness (i e by Yâjñavalkya)

1. Evidence, human and divine, has been thus explained with (its various) distinctions , the partition of heritage is now propounded by the image of holiness

Bâlambhatta's Gloss

1—The Scholiast explains the relevancy by a verse he has explained two kinds of evidence under two heads The image of holiness refers to Yâjnavalkya While describing the different parts of law, the portion relating to evidence intervened on the occasion He now proceeds after a digression to explain the law of partition of heritage being most impor tant of the remaining topics to be discussed

तत्रदायशब्देन यद्धनं स्वामिसंबन्धादेव निमित्तादन्यस्य स्वं भवति तदुच्यते ॥

तत्र tatra, there, here , दायशब्देन dâya śabdena, by the term (शब्द) heri tage (दाय) ; यद् yad, which , धनम् dhanam, wealth स्वामिसम्बन्धाद् swâmi sam-

bandhât, by the relation to the owner, एव eva, solely; निमित्ताद् nimittâd, by reason, अन्यस्य anyasya, of another, स्वम् svam, property, भवति bhavati, becoms; तद् tad that, उच्यते uchyate, is called, is named, as signified

2. Here the term heritage (dâya) signifies that wealth, which becomes the property of another, solely by reason of relation to the owner.

स च द्विविधः। अप्रतिबन्धः सप्रतिबन्धश्च। तत्र पुत्राणां पौत्राणां च पुत्रत्वेन पौत्रत्वेन च पितृधनं पितामहधनं च स्वं भवतीत्यप्रतिबन्धो दायः। पितृव्यभ्रात्रादीनां तु पुत्राभावे स्वाम्यभावे च स्वं भवतीति पुत्रसद्भावः स्वामिसद्भावश्चाप्रतिबन्धस्तदभावे पितृव्यत्वेन भ्रातृत्वेन च स्वं भवतीति सप्रतिबन्धो दायः। एवं तत्पुत्रादिष्वप्यूहनीयः।

स sah, it, च cha, and, द्विविध dvividhah, of two sorts, अप्रतिबन्धः apratibandha, unobstructed, सप्रतिबन्धः sapratibandha, liable to obstruction, च cha, and, तत्र tatra, there, पुत्राणाम् putrânâm, of sons; पौत्राणाम् pautrânâm, of grandsons, च cha, and, पुत्रत्वेन putratvena, by virtue of being sons, पौत्रत्वेन; pautratvena, by right of being grandsons, च cha, and, पितृ धनम् pitri dhanam, the wealth of the father, पितामह-धनम् pitâmaha dhanam, the wealth of the grandfather; च cha, and, स्वम् svam, one's own property भवति bhavati, becomes, इति iti, so, अप्रतिबन्धः apratibandhah, not liable to obstruction, दायः dayah, heritage, पितृव्य-भ्रात्रादीनाम् pitrivya bhrâtrivyâdînâm, of uncles and brothers and the rest, तु tu, but, पुत्राभावे putra abhave, in the absence of male issue, स्वाम्यभावे svâmyabhâve, in the absence of the owner, च cha, and, स्वम् svam, property, भवति bhavati, becomes इति iti, thus, पुत्रसद्भाव putra sad-bhâvah, the actual (सत्) existence (भाव) of a son (पुत्र), स्वामिसद्भावः svâmi sad bhâvah, the actual existence or survival of the owner, च cha, and, प्रतिबन्धः pratibandah, impediment, तदभावे tad abhâve, on their ceasing, पितृव्यत्वेन pitrivyatvena, in right of being uncle, भ्रातृत्वेन bhratritvena, in right of being a brother, च cha, and स्वम् svam, property (his own), भवति bhavati, becomes, इति iti, thus, सप्रतिबन्ध sapratibhandhah, liable to obstruction, subject to obstruction, दाय dâyah, heritage, एवम् evam, thus, तत्पुत्रादिषु tat putra-âdiṣu, in respect of their sons and other (descendants), अपि api, also, ऊहनीयः ûhaniyah, is to be reasoned or to be inferred, to be taken as holding good

3. It is of two sorts unobstructed (apratibandha) or liable to obstruction (sapratibandha). The wealth of the father or of the paternal grandfather, becomes the property of his sons or of his grandsons in right of their being his sons or grandsons:

and that is an inheritance not liable to obstruction But property devolves on parents (or uncles) brothers and the rest, upon the demise of the owner, if there be no male issue, and thus the actual existence of a son and the survival of the owner are impediments to the succession, and, on their ceasing, the property devolves on the successor in the right of his being uncle or brother This is an inheritance subject to obstruction. The same holds good in respect of their sons and other (decendants)

Bâlambhatta's Gloss

2, 3 —He explains the term 'heritage' 'Here' means while dealing with the 'partition of heritage' It excludes the popular idea of acquisition by sale etc, 'Relation' means the connection of the progeny with the proprietor i e, of the sons with the owner of the property &c That the word 'heritage' is conventionally used when the property of the former owner on the cessation of his ownership passes to another, as said previously, is refuted; because it contravenes the text 'if partition is effected ...' (II 114) which presupposes the ownership with birth This kind of heritage is called 'unobstructed', it is a *Vahubrihi* compound He explained the first kind, 'tatra' means 'of the two' Under text 'the land of the grand father .. . .. (II 121) the grandsons have equal rights in the property with their father by reason of their birth without any other means of acquisition It is unobstructed heritage

He proceeds to describe the second kind of heritage which is liable to obstruction 'Of the uncle and brother and the rest' in the text means the uncle, brother and others Out of honour he is mentioned first, the uncle being entitled to the property is described already Here the object in mentioning uncle is by way of illustration but not to indicate 'order' There is another reading father and brother &c', this indicates the order and means parents and brother &c

'Upon the demise of the owner if there be no male issue' contemplates the absence of both (the *prepositus* and the lineal descendants). 'In respect of their sons and other' means the sons &c of the uncle &c, because when those who are entitled to the property of the deceased by reason of the unobstructed line come under the first category and those who are obstructed (by the presence of such lineal descendants) come under the second category

विभागोनाम द्रव्यसमुदायविषयाणामनेकस्वाम्यानां तदेकदेशेषु द्रव्यस्य-व्यवस्थापनम् ।

विभागो नाम Vibhâgah-nâma, partition is (means) द्रव्य-समुदाय विषयाणाम् dravya samudâya vişayanâm, of the objects of the whole of the wealth, अनेक स्वाम्यानाम् aneka svâmyânâm, of divers rights तदेकदेशेषु tad-ekadeśeşu on particular portions of the aggregate, द्रव्यस्य dravyasya, of the (whole)

wealth ; व्यवस्थापनम् vyasthâpanam, adjustment.

4. Partitions (vibhaga) is the adjustment of divers rights regarding the whole, by distributing them on particular portions of the aggregate.

Bâlambhatta's Gloss.

4. Having explained the meaning of the term 'heritage', he explains the meaning of the term 'partition'. The separate allotment of the shares in the joint property of those who are not divided as of sons who have equal ownership therein is denoted by the term 'partition'.

एतदेवाभिप्रेत्योक्तं नारदेन ॥ विभागोऽर्थस्य पित्र्यस्य तनयैर्यत्र कल्प्यते । दायभागइति प्रोक्तं व्यवहारपदं बुधैरिति । पित्र्यस्येति स्वत्वनिमित्तसंबन्धोपलक्षणम् । तनयैरित्यपि प्रत्यासन्नोपलक्षणम् ।

एतद् Etad this , एव eva, very, the same opinion ; अभिप्रेत्य abhipretya, meaning, intending, referring, supporting ; उक्तम् uktam, it is said ; नारदेन nârdena, by Nârad ; विभागः vibhâgaḥ, division ; अर्थस्य arthasya, of the estate , पित्र्यस्य pitryasya, of the paternal ; तनयैः tanayaiḥ, by the sons ; यत्र yatra, where , कल्प्यते kalpyate, is instituted ; दाय भाग: dâya-bhâgaḥ, partition of heritage , इति iti, as ; प्रोक्तम् proktam, called ; व्यवहार-पदम्, vyayahâra-padam, topic of litigation ; बुधैः budhaiḥ, by the wise ; इति iti, so, thus ; पित्र्यस्य pitryasya, "of the paternal" ; इति iti, means ; स्वत्व svatva, of property ; निमित्त nimitta, the cause (which is) ; सम्बन्धोपलक्षणम् sambandha-upalakṣaṇam, something that implies the relation ; तनयैः tanyaiḥ, 'by sons' ; इति iti, this ; अपि api, too ; प्रत्यासन्नोपलक्षणम् pratyâsanna-uplakṣanam, (is) something that implies propinquity.

5. Entertaining the same opinion, Narada says, "Where a division of the paternal estate is instituted by sons, that becomes a topic of litigation called by the wise partition of heritage". "Paternal" here implies any relation, which is a cause of property. "By sons" indicates propinquity in general.

Bâlambhatta's Gloss.

5 He supports the above view from a quotation from Nârada. *Paitrasya* (paternal) is formed by adding 'aṇ' according to the rule enunciated by Panini ('Bis it.' IV 3 120. See for further explanation Panini's Grammar of the Panini Office, at page 792); while 'pitryasya' which is the reading of Kalpataru is not correct, because it is read in connection with the rights of the deities. *Yatra* in the text of Nârada means 'in litigation'. There is another reading 'अधिवादपदंबुधैः' (topic of dispute) ; here *tat* qualifies the thing described.

In order to avoid the defect, he explains one's said wealth passing to another 'Paternal' in the text which means the relation with the owner by virtue of which ownership in the property arises is by way of illustration It includes the property of the grandfather also He therefore says 'sons', 'propinquity' means unobstructed relation The previously said division of the undivided land, gold etc, in which there is a right by birth, in the absence of the conclusive proof of title by reason of their being incapable of special mode of transfer by casting lots is set aside By reason of the general nature of the relationship causing the ownership and by reason of the absence of the conclusive proof of title in keeping the property intact, it is very difficult to say otherwise then also, there will be freedom of action and mutual hostility

इदमिह निरूपणीयम्। कस्मिन्काले कस्य कथं कैश्च विभागः कर्तव्यइति। तत्र कस्मिन्काले कथं कैश्चेति तत्र तत्र श्लोकव्याख्यानएव वक्ष्यते। कस्यविभागइत्येतावदिहचिन्त्यते।

इदम् idam this these points इह iha, here, under this head, निरूपणीयम् nirûpaniyam, to be explained कस्मिन् kasmin at what, काले kale, (at) time, कस्य kasya, of what, कथम् katham how, कैः kaih, by whom च cha, and, विभागः vibhâgah, a partition, कर्तव्यः kartavyah, is to be made, इति iti, so, thus, then, now तत्र tatra, there, कस्मिन् kasmin, at what, काले kâle, time, कथम् katham, how, कैः kaih, by whom, च cha, and, इति iti, all these, तत्र तत्र tatra tatra, in those various places, and respectively, श्लोक व्याख्याने śloka vyâkhâne, in the course of interpreting stanzas, एव eva, very, indeed, वक्ष्यते vakṣyate, will be explained, कस्य kasya, of what, विभागः vibhâgah, the partition इति iti, thus, एतावत् etâvad, this much so much, इह iha, here, चिन्त्यते chintyate, is considered

6 The points to be explained under this (head of inheritance) are, at what time, how, and by whom, a partition is to be made, of what. The time, the manner, and the persons, when, in which, and by whom it may be made, will be explained in the course of interpreting stanzas on those subjects respectively. What that is, of which a partition takes place is here considered

किं विभागात्स्वत्वमुत स्वस्य सतोविभागइति। तत्रस्वत्वमेव तावन्निरूप्यते। किंशास्त्रैकसमधिगम्य स्वत्वमुत प्रमाणान्तरसमधिगम्यमिति।

किम् kim what, whether, it (to be taken as showing the interrogative form) विभागात् vibhâgât, from partition, स्वत्वम् svatvam, property उत uta or, स्वस्य svasya of property, सतः satah which is pre-existent विभाग vibhâgah property, इति iti, so, thus, तत्र tatra, under this, स्वत्वम् svatvam, proprietary right, एव eva, the same, itself, तावद् tavad, wholly, necessari-

ly ;निरूप्यते nirûpyate, is explained ; किम् kim, whether ; शास्त्रैक śastra-eka, from the sacred institutes alone ; समधिगम्यम् samadhigamyam, is to be deduced , स्वत्वम् svatvam, property , उत uta, or , प्रमाणान्तर pramaṇa-antara, from other proof ; समधिगम्यम् samadhigamyam, to be deduced ; इति iti, such (is the question).

7. Does property arise from partition ? or does partition of pre-existent property take place ? Under this (head of discussion) proprietary right is itself necessarily explained : (and the question is) : Whether property be deduced from the sacred institutes alone, or from other (and temporal) proof.

Bālambhatta's Gloss.

6 & 7 Having explained the relevancy, in order to make a determination and to come to the subject of partition, at the outset he says 'idam' (this), iha' (here) means 'under this subject of partition'. Here 'kasya' (whose) points to the property ; 'katham' (how) means 'the *mode' and 'kaihcha' (by whom) means the agents, the actors,* 'Tatra' (there) means 'amongst the four' , 'iha' (here) means 'first' because of its being the original cause and useful in the subject of heritage.

There is two fold determination ; the first point to be determined is the property to be partitioned. The question is, does partition create a title in one who has no property ? because by partition there is separate property but not before it ; or does birth alone create a title but not partition ? because thereby arises in one a right to get the property partitioned. This is therefore one point. He says 'does property arise from partition '? 'Swam' (property) means 'one's own' ; 'swasya' (of the property) 'of one's own pre-existing' ; 'tatra' (there) means in the above said determination ; 'eva' (only) indicates the impossibility without the determination thereof. That it is so, will be manifest later on ; here in this determination there is the topic of the property. Then he puts a question 'whether...from the sacred institutes alone' ; it means 'that alone' ; 'from other proof' means 'temporal '.

तत्र शास्त्रैकसमधिगम्यमिति तावद्युक्तं गौतमवचनात् (१०—३९-४२) । स्वामी रिक्थक्रयसंविभागपरिग्रहाधिगमेषु ब्राह्मणस्याधिकं लब्धं क्षत्रियस्य विजितं निर्विष्टं वैश्यशूद्रयोरिति" । प्रमाणान्तरगम्ये स्वत्वेनेदं वचनमर्थवत्स्यात्। तथा स्तेनातिदेशो मनुः। (अ० ८ श्लो० १४०) योऽदत्तादायिनो हस्ताल्लिप्सेत ब्राह्मणो धनम्। याजनाध्यापनादपि यथा स्तेनस्तथैव सः॥इति । अदत्तादायिनः सकाशात् याजनादिद्वारेण द्रव्यमर्जयतो दण्डविधानमुपपन्नं स्यात्स्वत्वस्य लौकिकत्वे । अपि च। लौकिकं चेत् स्वत्वं मम स्वमनेनापहृतमिति न ब्रूयात्। अपहर्तुरेव स्वत्वात्। अन्यथा स्वं तेनापहृतमिति नापहर्तुः स्वम्। एवं तर्हि सुवर्णरजतादिस्वरूपवदस्य वा स्वमन्यस्य वा स्वमिति संशयो न स्यात्। तस्माच्छास्त्रैकसमधिगम्यं स्वत्वमिति॥

तत्र Tatra, in that case, शास्त्रैक Śâstra oka, from the sacred code alone, समधिगम्यम् samadhigamyam, is to be deduced (the property); इति iti, so, तावद् tâvad, indeed, युक्तम् yuktam, right, गौतम-वचनात् Gautama-vachanât, on account of the text of Gautama, स्वामी svâmî, an owner, रिक्थ riktha, by inheritance, क्रय kraya, purchase, संविभाग samvibhaga, partition, परिग्रह parigraha, seizure, अधिगमेषु adhigameṣu, or by finding ब्राह्मणस्य brâhmanasya, for a Brahmana, अधिकम् adhikam, an additional mode, लब्धम् labdham, acceptance, क्षत्रियस्य kṣatriyasya, for a kṣatriya, विजितम् vijitam, conquest, निर्विष्टम् nirviṣṭam, gain; वैश्यशूद्रयोः vaiśya-śudrayoḥ, for a vaiśya and śudra इति iti, so, thus, प्रमाणान्तरगम्ये pramana antara gamye, if to be deducible from other proofs, स्वत्वे svatve, property, न na, not, इदम् idam, this, वचनम् vachanam, text; अर्थवत् arthavat, pertinent, स्यात् syât, would be (न स्यात् would not be), तथा tatha, so, स्तेनातिदेशे stena-atideśe, in the extended applications of the term "thief", मनुः Manuḥ, says Manu, यः yaḥ, who, अदत्तादायिनः adatta âdâyinaḥ, of a person who had taken what was not given to him, हस्तात् hastât, from the hand, लिप्सेत lipset, seeks to obtain ब्राह्मणः brahmanah a Brahmana, धनम् dhanam, wealth, याजन yâjana, by sacrificing, अध्यापनाद् adhyâpanâd, by instructing, वा vâ, or, अपि api, even, यथा yatha, as, स्तेनः stenah, a thief, तथा tathâ, so, एव eva, precisely, सः sah, he (is), इति iti, so (goes the precept of Manu about a thief), अदत्तादायिन adattâdâyinah, one who has taken what was not given to him, सकाशात् sakâśat, from, याजनादिद्वारेण yâjanâdi-dvârena, by officiating at sacrifices and other religious rites or by other means, द्रव्यम् dravyam, valuable things, अर्जयताम् arjayatâm, of those who obtain, दण्डविधानम् danda vidhânam, text that lays down punishment, उपपन्नम् upapannam, fair, proper, स्यात् syât, would be, स्वत्वस्य svatvasya, of property, लौकिकत्वे laukikatve, in the temporalness, अपि च api cha, and moreover, लौकिकम् laukikam, by temporal, a worldly matter, चेत् chet, if, स्वत्वम् svatvam, property, मम mama my, स्वम् svam property, अनेन anena, by him, अपहृतम् apahritam, has been wrongfully taken, इति iti, so, thus, न na, not, ब्रूयात् brûyât, could say, अपहर्तुः apahartuḥ, of the taker, एव eva, indeed, very, स्वत्वात् svatvât, because it would become the property (of the taker), अन्यथा anyathâ, or स्वम् svam, the property, तेन tena, by him, अपहृतम् apahritam was seized इति iti, so, therefore, न na, not अपहर्तुः apahartuh of the person स्वम् svam property, एवम् evam, thus, तर्हि tarhi, then सुवर्ण रजतादिस्वरूप इ suvarna rajata âdi svarûpavat, just as in the case of species whether gold silver or the like, अस्य asya, to this वा vâ or, स्वम् svam, property, अन्यस्य anyasya, of the other वा vâ, or, स्वम् svam, property, इति iti, so संशयः samsayah doubt न na, no, स्यात् syât, there should be, तस्मात् tasmât, therefore, शास्त्रैकसम्-

शास्त्र śastra-eka samadhigamyam, to be deduced from holy institutes alone, स्वत्वम् svatvam, property, इति iti, so, thus

8 (It is alleged, that) the inferring of property from the sacred code alone is right, on account of the text of Gautama, "An owner is by inheritance, purchase, partition, seizure, or finding. Acceptance is for a Brahmana an additional mode, conquest for a Cshatriya, gain for a Vaisya, or Sudra". For, if property were deducible from other proof, this text would not be pertinent So the precept ("A Bramana, who seeks to obtain anything, even by sacrificing or by instructing from the hand of a man, who had taken what was not given to him, is considered precisely as a theif ;) which directs the punishment of such as obtain valuables, by officiating at religious rites, or by other similar means, from a wrongdoer who has taken what was not given to him, would be irrelevant if property were temporal. Moreover, were poperty a worldly matter, one could not say, "My property has been wrongfully taken by him" for it would belong to the taker Or, (if it be objected that) the property of another was seized by this man, and it therefore does not become the property of the usurper, (the answer is) then no doubt could exist, whether it appertain to one or to the other, any more than in regard to the species, whether gold, silver or the like. Therefore property is a result of holy institutes exclusively.

Bâlambhatta's Gloss

8 He proceeds to explain the first view, 'tatra' means 'of these two' He explains the same, 'owner' has been explained already, it will be clear at every step in the original He explains the source of its acquisition, 'other proof' means temporal This is Gautama's text There is no use in repetition, he shows the contradiction with another text 'So' (tatha) 'if property were temporal' should be connected with what follows; 'from a wrong doer who has taken what was not given to him' is in the genitive case and means connected with the hand taking the property *from the hand of a thief who has acquired the property of another who* has not given it Subsequently, he explains the result, 'Yajana' (officiating at religious rites) is a *dwanda* compound 'api' (even) means 'the different modes of acquisition' Comparison with theft is with a view to inflict punishment

He gives a reason in support of the property being non temporal 'Moreover', 'property' 'that' is understood, he gives a reason, 'it would belong to the taker' because we see it in his possession In order

to avoid this difficulty, he raises a special doubt 'Atha', he proceeds to remove it, 'similarly then' (evam tarhi) on the property being temporal and on its being seized upon by another, if the owner complains, 'my property has been taken away by him' there arises no such doubt in the mind of the hearing members of the assembly (judges of the court or the jury) Just as in the worldly affair on examining gold or silver, there is no doubt left whether it is gold etc or not, similarly there will be none in the case of the property By reason of the existence of the millions of credentials from the people, a doubt, however, arises and it can not be said 'the property, therefore, does not belong to the seizer' Or in the alternative, the complainant (or the plaintiff) should be asked 'there is no conviction (certainty) that the property does not belong to the usurper' 'Similarly then' just as on the conviction arising that it is gold or silver, there is no doubt left as to gold etc, so it is in the present case , but not so in the second case, because it can not be said that the property does not belong to the usurper, on conviction not arising In this way he sums up, 'therefore .'

अत्रोच्यते । लौकिकमेव स्वत्वं लौकिकार्थक्रियासाधनत्वात् । व्रीह्यादिवत् । आहवनीयादीनां हि शास्त्रगम्यानां न लौकिकक्रियासाधनत्वमस्ति । नन्वाहवनीयादीनामपि पाकादिसाधनत्वमस्त्येव । नैतत् । न हि तत्राहवनीयादिरूपेण पाकादिसाधनत्वम् । किं तर्हि प्रत्यक्षादिपरिदृश्यमानाग्न्यादिरूपेण । इह तु सुवर्णादिरूपेण न क्रयादिसाधनत्वमपि तु स्वत्वेनैव । न हि यस्य यत्स्वं न भवति तत्तस्य क्रयाद्यर्थक्रियां साधयति । अपिच । प्रत्यन्तवासिनामप्यदृष्टशास्त्रव्यवहाराणां स्वत्वव्यवहारोऽस्त्येव । क्रयविक्रयादिदर्शनात् ।

अत्र atra, here to this ; उच्यते uchyate, it is said as an objection , लौकिकम् laukikam, temporal ; एव eva, only , स्वत्वम् svatvam, property (is) , लौकिकार्थक्रियासाधनत्वात् laukikârtha kriyâ sadhanatvât, for it effects transactions relative to worldly purposes , व्रीह्यादिवत् vrihi âdivat, just as in the case of rice and similar substances , आहवनीयादीनाम् âhavaniyâdinâm, as regards the concentrated fire (आहवनीय) and the like substances हि hi, but , शास्त्रगम्यानाम् śastra gamyânâm, deducible from holy institutes ; न na, not , लौकिक laukika, secular, क्रिया kriyâ, purposes; साधनत्वम् sâdhanatvam the virtue of effecting (secular purposes) , अस्ति asti, there is (na not) , ननु nanu, is it not indeed that ; आहवनीयानाम् âhavaniyânâm, of the consecrated fire &c ; पाकादिसाधनत्वम् pâkâdisâdhanatvam, the virtue of effecting cooking etc , अस्ति asti, there is , एव eva, indeed, surely , न na, no , एतत् etat, this (is not so) , न na, not (it is not) , हि hi, because , तत्र tatra, there , आहवनीयादिरूपेण âhavaniyâdirûpena by its nature of being the consecrated fire , पाकादिसाधनत्वम् âkâdisâdhanatvam the power of effecting cooking etc , किंतर्हि kimtarhi, but as ; प्रत्यक्षादि pratyakṣadi, to the senses (such as sight etc) , परिदृश्यमान paridṛiayamana perceptible , अग्न्यादिरूपेण agni-adi rûpena,

but as in the form of fire etc ; इह iha, here ; तु tu, but ; सुवर्णादिरूपेण suvarṇâdi-rûpeṇa, through the form of gold etc ; न na, not ; क्रयादि krayâdi, the purchase etc., साधनत्वम् sâdhanatvam, the virtue of being the means of effecting ; अपि api, indeed ; तु tu, but ; स्वत्वेन svatvena, by virtue of its being property , एव eva, only , न na, not , हि hi, because , यस्य yasya, whose, of a person ; यत् yat, which ; स्वम् svam, property ; न na, not ; भवति bhavati, becomes , तत् tat, that ; तस्य tasya, his ; क्रयादि kraya-âdi, by sale &c. ; अर्थ-क्रियाम् artha-kriyâm, transfer of a thing ; साधयति sâdhyati, does not give effect , अपि च api-cha, even and ; प्रत्यन्तवासिनाम् pratyanta-vâsinâm, of the inhabitants of the barbarous countries ; अपि api, even ; अदृष्टशास्त्रव्यवहाराणाम् adṛiṣṭaśâstravyavahârâṇâm, who are unacquainted with the practices in the sacred code ; स्वत्वव्यवहारः svatva-vyavahâraḥ, use of the property , दृश्यते dṛiśyate, is seen ; क्रय-विक्रयादि-दर्शनात् kraya-vikraya âdi-darśanât, by seeing purchase-sale &c.

9. To this the answer is, property is temporal only, for it effects transactions relative to worldly purposes, just as rice or similar subtances do: but the consecrated fire, and the like, deducible from the sacred institutes, do not give effect to actions relative to secular purposes. (It is asked) does not a consecrated fire effect the boiling of food, and so, of the rest ? (The answer is) No ; for it is not as such, that the consecrated flame operates the boiling of food ; but, as a fire perceptible to the senses: and so, in other cases. But, here, it is not through its visible form, either gold or the like, that the purchase of a thing is effected, but through property only. That, which is not a person's property in a thing, does not give effect to his transfer of it by sale or the like. Besides, the use of property is seen also among inhabitants of barbarous countries, who are unacquainted with the practices directed in the sacred code ; for purchase, sale, and similar transactions are observed among them.

Bâlambhaṭṭa's gloss.

9. Here is the author's view ; 'to this the answer is etc.' : he proceeds to prove the property to be temporal by syllogistic reasoning (inference). 'Property' is the minor term, 'temporal purpose' is the major term and 'secular purpose' is the middle term (reason) He gives the 'example' in the affirmative and negative forms , 'just as rice or similar substances.' Accordingly,

I
Property is temporal

∵ It is a means to transact temporal purpose

1.—1 Whatever is a means to transact temporal purpose is temporal, as for example rice &c.

2 It is so, (property is a means to transact temporal purpose).

3 ∴ property is temporal

II —1 Whatever is not temporal is (also) not a means to transact temporal purpose, as for example, the consecrated fire &c It is an example of negation. 'Of the consecrated fire and the rest', 'hi', because He proceeds to show the defect in the pervasion by suggesting that if it were possible, the inference not manifest from negation is not reliable 'Does not a consecrated fire &c'? means that though it was non temporal, yet being used in cooking for temporal purpose the negative inference is defective, 'also' refers to rice &c He proceeds to answer it, 'not so' though the consecrated fire has two fold form, its use for cooking is not from the scriptural texts, since the resorting to the cooking purpose is on account of the form of the temporal fire inferior to the form of the non-temporal consecrated fire It can not be done by means of the form of the non temporal consecrated fire, similarly if it were so, there will be no cooking by means of the temporal fire which is inferior in form to the non temporal consecrated fire The same (result) does not happen every where by means of the general form, otherwise by reason of its serving the secular object, the scriptural text would be meaningless, its being a means to temporal purpose is, therefore, based upon the the result which accrues There is, therefore, no defect in the pervasion In the present case also viz. the gold &c there should be a means of the worldly transactions of sale and purchase by the mere appearance of gold &c, but not by their being property How can they be temporal? He proceeds to meet the objection by 'here &c', 'through property only' means 'only by one who is possessed of it' Harping on the same, he develops the same (argument), 'not so' (nahiti) He adduces a reason in support of the view that even the special transaction amongst the people does not establish the non temporal nature of the property 'and also' 'pratyantah' means barbarous country, it suggests the perpetual want of scriptural knowledge He explains it "unacquainted with" means 'ignorant of' i e the barbarians Now the use thereof is said to be in conformity with a standard; but where is the proof of the existence of the standard? How can you presume it (the proposition) to be proved? He therefore says, 'purchase'

किच । नियतोपायकं स्वत्व लोकसिद्धमेवेति न्यायविद्भिर्मन्यन्ते । तथाहि ? लिप्सासूत्रे तृतीये पर्वके द्रव्यार्जननियमानां क्रत्वर्थत्वे स्वत्वमेव न स्यात् । स्वत्वस्या-लौकिकत्वादिति पूर्वपक्षासम्भवमाशङ्क्य द्रव्यार्जनस्य प्रतिग्रहादिना स्वत्वसाधनत्व लोकसिद्धमिति पूर्वपक्षः समर्थितोगुरुणा । ननु च द्रव्यार्जनस्य क्रत्वर्थत्वे स्वत्वमेव न भवतीति यागएव न सम्पद्येत । प्रत्युपतिमिदं केनापि प्रमाणेन ... नोपादपतीति विप्रति-

विद्धमिति वदता । तथा सिद्धान्तेऽपि स्वत्वस्य लौकिकत्वमङ्गीकृत्यैव विचारप्रयोजनमुक्तम् । अतोनियमातिक्रमः पुरुषस्य न क्रतोरिति । अस्य चार्थ एवं विवृतः । यथा द्रव्यार्जननियमानां क्रत्वर्थत्वं तदा नियमार्जितेनैव द्रव्येण क्रतुसिद्धिः । नियमातिक्रमार्जितेन द्रव्येण न क्रतुसिद्धिरिति । न पुरुषस्यनियमातिक्रमदोषः पूर्वपक्षे । राद्धान्ते तु अर्जननियमस्य पुरुषार्थत्वात्तदतिक्रमेणार्जितेनापि द्रव्येण क्रतुसिद्धिर्भवति । पुरुषस्यैव नियमातिक्रमदोषःइति नियमातिक्रमार्जितस्यापि स्वत्वमङ्गीकृतम् । अन्यथाक्रतुसिद्ध्यभावात् ।

किंच kiṃ cha, moreover, नियतोपायकम् niyatopâyakam, regulated *means of acquisition*, स्वत्वम् svatvam, *property*, लौकसिद्धम् *loka-siddham*, a matter of popular recognition, एव eva, also, इति iti, a participle, न्यायविदः nyâya vidaḥ, conversant with the science of reasoning मन्यन्ते manyante, deem, तथाहि tathâhi, similarly, लिप्सा lipsâ, *desire*, सूत्रे sûtre, in the sûtra, तृतीये tṛitîye, in the third, वर्णके varṇake, clause, द्रव्यार्जन dravyârjana, in the acquisition of goods, नियमानाम् niyamânâm, restrictions, क्रत्वर्थत्वे kratu arthatve, for the religious ceremony, स्वत्वम् svatvam, property, एव eva, also, न na, not; स्यात् syât, be, स्वत्वस्य svatvasya, of ownership, अलौकिकत्वात् alaukikatvât, by reason of being not temporal, इति iti, participle, पूर्वपक्ष pûrva pakṣa, objection, असम्भवम् asambhavam, untenable, आशङ्क्य âśaṅkya considering, द्रव्यार्जनस्य dravyârjanasya of acquisition of wealth, प्रतिग्रहादिना pratigrahâdinâ, by acceptance and other modes, स्वत्वसाधनत्वम् svatva sâdhanatvam, the *efficacy in instituting proprietary right*, लोकसिद्धम् loka siddham, as popularly recognized, इति iti, so, पूर्वपक्षः pûrvapakṣah, the first part, the objection, समर्थितः samarthitaḥ, considered, गुरुणा guruṇâ by the author; ननु nanu, is it not, *does it not follow?*; च cha, and, द्रव्यार्जनस्य dravyârjanasya, the mode of acquiring goods, क्रत्वर्थत्वे kratu arthatve, if it be such as concerns the sacrifice or religious ceremony, स्वत्वम् svatvam, *any right of property* एव eva, *itself* न na, *not*, भवति bhavati, there is, इति iti, consequently; यागः yâgaḥ, celebration of a sacrifice, एव eva, itself, न na, not संवर्तेत samvarteta would take place, प्रलपितम् pralapitam, wrongly said, blunder, इदम् idam, this, it, केनापि kena api, by any one (who affirms) अर्जनम् arjanam, acquisition, स्वत्वम् svatvam, a proprietary right; न na not, आपादयति âpâdayati, does produce, इति iti, this statement, विप्रतिषिद्धम् viprati-siddham, it is contradicted, it is a contradiction "in terms", इति iti, so, thus वदता vadatâ, by him who says so, तथा tatha, accordingly, सिद्धान्ते siddhânte, while stating the demonstrated doctrine, अपि api, also स्वत्वस्य svatvasya, about property, लौकिकत्वम् laukikatvam, the popular notion, अङ्गीकृत्य aṅgîkṛitya,

having acknowledged , एव eva, again, indeed verily , विचार-प्रयोजनम् vichâra prayojanam the purpose of disquisition उक्तम् uktam is explained , अतः atah, therefore , नियमातिक्रम niyama atikramah, a breach of the restriction , पुरुषस्य purusasya, affects the person , न na, not , क्रतो kratoh, the religious ceremony , इति iti, thus अस्य asya, of this passage च cha, and , अर्थ arthah the meaning , एवम् evam, thus, in this way विवृत. vivṛitah, is explained , यथा yathâ, if , द्रव्यार्जन नियमानाम् dravyârjana-niyamânâm, the restrictions of the acquition of chattels (द्रव्य) , क्रत्वर्थत्वम् kratvarthatvam, regard the religious ceremony , तदा tadâ, then , नियमार्जितेन niyamârjitena, by that (material) which is obtained by those rules , एव eva, only (by) , द्रव्येण dravyena, by material क्रतुसिद्धिः krato siddhih, the perfection or completion , नियमातिक्रमार्जितेन niymâtikramârjitena, which is obtained by infringing the rules द्रव्येण dravyena, by that material , न na, not , क्रतुसिद्धिः kratu siddhih, the perfection of the religious celeberation , इति iti, so, न na, not , पुरुषस्य purusasya, affecting the person , नियमातिक्रमदोष niyama atikrama doṣah, the fault of infringing the rules , पूर्वपक्षे pûrvapakṣa, according to the adverse opinion , राद्धान्ते râddhante, according to the demonstrated conclusion , तु tu, but , अर्जननियमस्य arjana-niyamasya, of the restriction regarding the acquisition , पुरुषार्थत्वात् puruṣârthatvât, since they affect the person , तदतिक्रमेण tad atikramena, by a breach of that , अर्जितेन arjitena, obtained , अपि api, even , द्रव्येण dravyena, with wealth , क्रतुसिद्धि kratusiddhih, the perfection of the religious right , भवति bhavati, becomes, is affected, takes place , पुरुषस्य purusasya, on the part of the person एव eva, only , नियमातिक्रम niyamâtikrama, violating the rules , दोषः doṣah, the fault, offence , इति iti, consequently , नियमातिक्रमार्जितस्य niyamâtikrama arjitasya, what is acquired by violating the rules ; अपि api, even स्वत्वम् svatvam, is property', अङ्गीकृतम् angikṛitam, it is acknowledged अन्यथा anyathâ, otherwise , क्रतुसिद्धि kratusiddhi, completion of ceremony , अभावात् abhâvât, because there would not be any, etc

10. Moreover, such as are conversant with the science of reasoning, deem regulated means of acquisition a matter of popular recognition. In the third clause of the Lipsâ Sutra, the venerable author has examined and pronounced untenable an objection to it, that, "if restrictions, relative to the acquisition of goods, apply to the religious ceremony, there could be no property, since proprietary right is not temporal' , (by showing the) "the efficacy of acceptance and other modes of acquisitions in

constituting proprietary right, is matter of popular recognition." Does it not follow, "if the mode of acquiring the goods concern the religious ceremony, there can be no right of property, and consequently no celebration of a sacrifice"? (Answer.) "It is a blunder of any one who affirms that acquisition, does not produce a proprietary right, since this is a contradiction in terms". Accordingly, the author, having again acknowledged property to be a matter of popular recognition, when he states the demonstrated doctrine, proceeds to explain the purpose of the disquisition in this manner. "Therefore, a breach of the restriction affects the person, not the religious ceremony:" and the meaning of this passage is thus expounded: 'If *restrictions, respecting the acquisition of chattels,* regard the religious ceremony, its celebration would be perfect with such property as was acquired consistently with those rules; and not so, if performed with wealth obtained by *infringing them; and consequently, according to the objector's* opinion, the fault would not affect the man, if he deviated from the rule: but, according to the demonstrated conclusion, since the restriction, regarding acquisition affects the person, the performance of the religious *ceremony is complete, even* with property acquired by a breach of the rule; and it is only an offence on the part of the man, because he has violated an obligatory rule.' It is consequently acknowledged, that even what is gained *by infringing restrictions,* is *property:* because, *otherwise,* there would be no completion of a religious ceremony.

Bâlambhatta's gloss.

10. The real nature of the property meets the approval of those who are conversant *with the science of reasoning* 'Moreover', '*regulated means* of acquisition' means acceptance of gifts, earning &c.; 'those' who are conversant with the science of reasoning' means they also: how? On this question arising, he gives the said reply by 'as for example' (tathâ hi); 'desire' means 'in the sûtra in which the word occurs i. e. Chapter IV. Pâda I, *the second topic (which runs thus)* "*(purushârtha is that)* in which there is love of a man and that love is indicated by (a certain) object (which) is inseparably connected (with it)"*

Under the 1st head there is the discussion on the definition of the

*See *Pûrva Mîmâmsâ p. 192 of S. B. H. vol XXVII*

Kratvartha and Puruşârtha under the second head there is a discussion as to whether milk pail &c , are kratvartha or puruşartha under the third head there is this discussion —the rules as to the acquisition of wealth from scattered texts—"Brahmana may earn wealth by acceptance of gifts & a king by victory &c , a Vaisya by agriculture &c Doubt arises whether they (earnings) are kratvartha or puruşartha Here is the objector's view even on (assuming) their real nature and not accepting them to be for the religious purpose by reason of the absence of an authorised person, it is proper that the distribution of wealth by means of an agent (to obviate) the meaninglessness of the *vidhi* is for the religious purpose The meaning is just as in acquiring wealth spent in a religious ceremony, (as for instance) the purchases soma &c , the rule about the acquisition of wealth is for the religious purpose similarly are the rules relating to the acceptance of gifts &c otherwise, the rule relating to the acquisition of wealth by reason of being of no use in effecting transactions and removing hunger &c , will be meaningless Further there is no context to show that it is for a religious purpose, nor can it be said to be a case of disparity On the contrary it is proved to be a subsidiary part by the force of the sacrifice dependent on the invisible means and the force of the rule depending on the invisible object It can be urged that there can be no living, if all the earnings are for a religious purpose, because it can be accomplished with earnings by improper means , or if the sacrificial rite be for one's own interest by reason of the sacrifice being not capable of accomplishment without livelihood, it follows that the wealth acquired by lawful means is for the purpose of living It is an illustration of earning wealth in the shape of acquisition of wealth The writer of Tantraratna (Pârthasârthi) has said contrary to the Vârtika and reason , for it should be borne in mind that in the Mimâmsâ, there is investigation of the duties to be performed

He thus derides, commencing from 'property' and ending with 'raising objection 'On the rules relating to the acquisition of wealth being for the sacrifice, by the property being non temporal, by the non production of a temporal reason, by the intervention of the Vedic cause, by the regulated means such as acceptance &c being for the sacrifice, by being for any other object and by the absence of the production of an effect from no cause on account of the want of the proprietary right by reason of non accrual of proprietary right, the sacrifice can not be accomplished The objector's view that rules are with the religious object is untenable It is the meaning (it is how the matter stands)

He supports it, 'of acquisition of goods' it is connected with the opposite While discussing, "one should acquire wealth by means of officiating a priest &c ," it has been already explained Here 'acceptance' (pratigraha) means a 'particular acceptance' earning' [illegible] wealth ' One should therefore, desire wealth 'by officiating as priests &c , so it is said previously in the smriti "One should worship God for acquisition and protection of wealth' I—100

The original text signifies the means of earning

"Out of six, three callings are his means of livelihood, officiating as a priest teaching and acceptance (of gift) from a pious (man) M X 76 It follows from Manu The rules as to acceptance &c, for the acquisition of proprietary right by means of using wealth in a sacrifice, are for the religious object, just as the act of threshing which removes the husk by reason of rice being used in a sacrifice becomes a sacrificial object But old people consider that proprietary right by birth as that of a son like the proprietary right acquired by an acquirer in the thing acquired in the form of the relationship of the proprietary right and the proprietor, is temporal, because it is asserted that the relation of an action and the agent (nominative) save and except the other cases depends on an action whether scriptural or non scriptural The relationship of an agent and action depending on an action as said by (Hari) Hārita is well known among people and does not stand in need of any other proof On the cessation of the action of earning, the result thereof does not necessarily cease, because the substratum in the shape of relationship exists On the action of the father ceasing, paternal (relationship) does not come to an end Though the propritary right is temporal, yet by accomplishing the sacrificial object, its absence does not follow' this is the essence.

Is it that in acquiring the proprietary right by earning, the above-said rules being for the sacrificial object and the earning being also for the sacrificial and other objects there is no property? The absence of sacrifice remains in the same state, the view of the objector is not proved, thus he says "Does it not (...... .. ..) of a sacrifice", he ridicules it and rejects it, 'uttered a nonsense'(pralapitam)means that earning does not produce proprietary right is a nonsense uttered by some one, because both are contradictory, or it means that some one has uttered a non-sense, here is a reason assigned 'Earning' because &c } 'iti vadata' is connected with the 'guruṇā' (Prabhākara) earning is synonymous with the duty of an earner as explained previously and the relationship of the property with its owner It is two-sided like father and son (correlative),because without a thing earned, for want of earning, the act of earning does not produce proprietary right and like the expression, 'my mother is barren' is self contradictory.

If the objector's view is erroneous, it can not be the author's view (demonstrated truth), therefore he says in the demonstrated truth also (sidhanto api) it is thus When a person is entitled and bent on earning wealth on his acquiring it, it is improper to apply the rules thereof to a sacrifice When a person is desirous of wealth, he is engaged out of affection but not by rules, by reason of his engagement in it against the rules, the injunction relating to it does not become meaningless Moreover, on all sorts of earning being for the sacrificial purpose, the entire earning is for sacrificial purpose, there being no means of livelihood (left) the whole sacrifice fails On the contrary, on the inference arising from the texts suggesting both the sacrificial and temporal objects ordinarily it is not merely for the sacrificial object The reference to earning of wealth is therefore, not by reason of the sacrifice being for a religious purpose but byreason of its being for a secular purpose Other

wise, there will be a contradiction with reference to earning of wealth for a sacrifice as mentioned in the sixth cha ter "Of the first three castes, only person possessed of wealth (is entitled to perform a sacrifice), because accomplishment of an a t depends on wealth" (Mimamsa VI 1 39 at p 310 of vol XXVIII of S B H) There is another anomaly "An initiated one begs alms for twelve nights and purchases soma", under which begging of alms &c , by prohibiting earning of wealth is enjoined,* and earn ing of wealth by other means is considered a sin It can be said that its result is not the earning of wealth like 'let gold be worn' (see at 130 132 of Jaimini's Mimansa S B H) It is possible where the result is visible by reason of the unlawfulness of the invisible result The rules are, therefore, with the temporal obj ct though they are laid down there properly yet like the sacred thread &c , they should be understood with both objects , therefore "let a t vice-born always perform (a sacrifice) with wealth earned lawfully' , fits in with the Twentyfour views ,† similarly earning also Therefore livelihood &c , quoted before from Manu (see p 16) should be considered as relevant The sum and substance is that it appears to be the siddhânta view that wealth accomp lishing all objects is for secular purp se and the rules relating thereto are also with that purpose 'Disquisition' means the purpose of the disquisition under the topic (adhikarna) He explains the nature of the object of the demonstrated doctrine (siddânta) "Therefore a breach of the restriction" means the fault arising therefrom , therefore he develops it "The meaning of this means "of the work full of purpose 1 o the original text", 'expounded' by the Guru (Prabhâkara) is under stood "If, deviated to the rule" means "with the end of the text '; in the objector's view, there is thereby no fault of the man, but by reason of the failure of the sacrifice, the sacrifice is not thereby accomplished But according to the siddhânta view by reason of a man violating them there is the fault of the man but not the failure of the sacrifice , it is the purport '*Eva*' is with a view to distinction 'in the objector's view" (Pûrvapaksa) is connected with the previous 'is' is the reading But in the view of the objector earning of wealth being a part of a ceremony the wealth which is essential should be acquired before the commencement of the ceremonies, there being no authority of acquiring it at a particular time There is no sin even on the failure of the ceremony on the non acquisition of the wealth at that time, because a person of means is entitled to it On the contrary, in the siddhânta (demonstrated conclusion) a ceremoney should be performed with the wealth acquired previously According to the object r's view the earnings from the acceptance of gifts etc , should be taken for the religious purpose but according to the dem nstrated c n lusi n, it should be accomplished by any means, by this what Ranaka (Nyâya Sudhi, the commentary on Tantravârtika by Someśwara Bhatta) has said, is refuted It is like the sin arising on n n observance of the restrictive rules by happening of the undesired events to a man, by reason of the fault arising fr n the misf rtune from the hardship undergone for the sacrifice which fails for want of the fruit of the sacrifice obt inable with difficulty Hence in the topic relating to low castes it is said 'a

* See Mimamsa at p. 418 of vol XXV II of S B H

† Dr Ganganath Jha informs me that चतुर्विंशतिमत is the name of some wo k

Sûdra should not be taught'; on a Sûdra violating the prohibition there is a failure of the sacrifice, and a sin in addition. So it is said by the commentator (Śabara). It should be accordingly borne in mind.

At the conclusion of the subject under discussion, he gives the result. "Even what is gained by infringing restrictions" means 'and similarly' etc., i e by the author holding the siddhânta view; 'even' suggests the Kaimutika maxim see p. 9 of vol. XXVIII; P. XXXI of vol. XXIX of S. B. H)* 'Other wise' means there will be no proprietary right in the earnings by violation of the rules The rules being for the religious object and by the acquisition being for it, the property becomes non-temporal, there being no proprietary right, the livelihood is impossible: from the absence (of livelihood) follows the failure (of the sacrifice).

Mitâkṣarâ

न चैतावता चौर्यादिप्राप्तस्यापि स्वत्वं स्यादिति मन्तव्यम् । लोके तत्र स्वत्वप्रसिद्ध्यभावात् व्यवहारविसंवादात् । ११ ॥

न na, not; च cha, and, एतावता etâvatâ, by this; चौर्यादि chauryâdi, by robbery and other nefarious acts; प्राप्तस्य prâptasya, of what is obtained, अपि api, even; स्वत्वम् svatvam, the right of being property; स्यात् syât, should be (not न), इति iti, so; मन्तव्यम् mantavyam, should be thought, alleged; लोके loke, in the world; तत्र tatra, there, in such cases; स्वत्व svatva, of proporitary right, प्रसिद्धि prasiddhi, of recognition; अभावात् abhâvât, through the absence of, there being no etc.; व्यवहार vyavahâra, with received practice; विसंवादात् visamvâdât, owing to disagreement with.

11. *It should not be alleged, that even what is obtained by robbery and other nefarious means, would be property. For proprietary right in such instances is not recognized by the world; and it disagrees with received practice.*

Bâlambhatta's gloss.

11 If you accept the proprietary right to accrue in the earning made by the breach of the rules, there will be proprietary right even in the property obtained by theft Therefore, suggesting the removal of the anomaly, he says. *"It should not be alleged etc.," meaning 'no'; he removes*

* 'Rhetorical flourishes, meant to indicate that what applies to a remote case, *a fortiori* applies to a case close at hand, should not literally be understood" K. L. Sircar's Mimâmsâ lectures p. 295. "Where there are means at hand to explain the most difficult subject, one can explain an easy subject without difficulty " *Vâchaspatya* vol. V. p. 4152, Where one is skilful in shooting a lion, it is not difficult for him to shoot a fox in hunting. These are all illustrations of the Kaimutika maxim It is derived from √*Kim*+*Uta* meaning "how much more? or how much less"? It is a principle of *a fortiori*

thereby the *futility of the reason*, '*it disagrees with received practice*'' means 'by not recognising it in the well known transaction of sale'

Mitâkṣarâ

एवं प्रतिग्रहाद्युपायके स्वत्वे लौकिके स्थिते ब्राह्मणस्य प्रतिग्रहादयउपायाः । क्षत्रियस्य विजितादयो वैश्यस्य कृष्यादयः । शूद्रस्य शुश्रूषादयस्त्वदृष्टार्थनियमा रिक्था-दयस्तु सर्वसाधारणाः । स्वामी रिक्थक्रयसंविभागपरिग्रहाधिगमेष्वित्युक्ताः । १२ ॥

एवम् Evam, thus, प्रतिग्रहादि pratigrahâdi, by acceptance and any *other*, उपायके upâyake, by means such as acceptance etc, स्वत्वे svatve property लौकिके laukike, temporal, स्थिते sthite, being established ब्राह्मणस्य brâhmanasya, for a brâhmaṇa, प्रतिग्रहादयः pratigrahâdayah, acceptance etc, उपायाः upâyâh, means, क्षत्रियस्य *kṣatriyasya for a kṣatriya*, विजितादयः vijitadayah, conquest etc, वैश्यस्य vaiśyasya, for a vaiśya; कृष्यादयः *kṛṣyâdayah, husbandry* etc, शूद्रस्य *śûdrasya, for a śudra*, शुश्रूषादयः śuśrûṣâdayah, service and the rest, इति iti, so, अदृष्टार्थं adriṣ târtha, for spiritual purposes, नियमाः niyamâh, restrictions, रिक्थादयः rikthâdayah, inheritance and others, तु tu, but, सर्वसाधारणाः *sarva-sâdhâraṇâh*, common to all, स्वामी svâmî, an owner is, रिक्थ riktha inheritance; क्रय kraya, purchase, संविभाग savibhâga, partition, परिग्रह parigraha, seizure; अधिगमेषु adhigameṣu, finding; इति iti, so, उक्ताः *uktâḥ*, are stated

12 Thus, since property, obtained by acceptance or any *other (sufficient) means, is established to be temporal, the acceptance* of alms, as well as other (prescribed) modes for a Brahmana, conquest and similar means for a Kshatriya, husbandry and the like for a Vaisya, and service and the rest for a Śudra, are propounded as restrictions intended for spiritual purposes, and inheritance and other modes are stated as means common to all "An owner s by inheritance purchase, partition, seizure, or finding".

Bâlambhatta's gloss

12 In this way having established the temporal nature of the property, *he repels the futility of the uncommon* injunction 'Similarly acceptance' etc, (evam prati) 'vijita' (conquest) is derived by adding *ktah to denote* an abstract noun and means victory etc, 'prescribed modes' should be repeated every where in the following (passage) 'Spiritual' (adriṣta) means 'wealth is for spiritual purpose' or in other words the restrictive rules are for spiritual purpose Even in the absence of the injunctive text, he proceeds to repeat the above mentioned arguments to support the non secular nature of the property and to show the

futility of Gautam's text having complete enumeration (see placitum 8 at p. 8) "Inheritance......" should be referred to. 'All' includes 'mixed race' in order to enumerate them, he says, "an owner."

Mitâkṣarâ

तत्राप्रतिबन्धो दायो रिक्थम् । क्रयः प्रसिद्धः । संविभागः सप्रतिबन्धो दायः । प्रतिग्रहोऽनन्यपूर्वस्य जलतृणकाष्ठादेः स्वीकारः । अधिगमो निध्यादेः प्राप्तिः । एतेषु निमित्तेषु सत्सु स्वामी भवति । कृतेषु ज्ञायते स्वामी ब्राह्मणस्याधिकं लब्धमिति ब्राह्मणस्य प्रतिग्रहादिना यल्लब्धं तदधिकमसाधारणम् । क्षत्रियस्य विजितमित्यत्राधिकमित्यनुवर्तते । क्षत्रियस्य विजयदण्डादिलब्धमसाधारणम् । निर्विष्टं वैश्यशूद्रयोरिति । अत्राप्यधिकमित्यनुवर्तते । वैश्यस्य कृषिगोरक्षादिलब्धं निर्विष्टं तदसाधारणम् । शूद्रस्य द्विजशुश्रूषादिना भृतिरूपेण यल्लब्धं तदसाधारणम् । एवमनुलोमजानां प्रतिलोमजानां च लोकप्रसिद्धेषु स्वस्वहेतुषु यद्यदसाधारणमुक्तं सूतानामश्वसारथ्यमित्यादि तत्तत्सर्वं निर्विष्टशब्देनोच्यते । सर्वस्यापि भृतिरूपत्वान्निर्वेशो भृतिभोगयोरिति त्रिकाण्डीस्मरणात् तत्तदसाधारणं वेदितव्यम् । १३ ॥

तत्र tatra, there ; अप्रतिबन्धः apratibandhaḥ, unobstructed ; दायः dâyaḥ, heritage ; रिक्थम् rikthaṃ, inheritance ; क्रयः krayaḥ, purchase ; प्रसिद्धः prasiddhaḥ, is well known ; संविभागः saṃvibhâgaḥ, partition ; सप्रतिबन्धः sapratibandhaḥ, subject to obstruction ; दायः dâyaḥ, heritage ; प्रतिग्रहः pratigrahaḥ, occupation or seizure ; अनन्यपूर्वस्य ananyapûrvasya, not previously appertaining to , जलकाष्ठादेः jala-kâṣṭhadeḥ, of water, wood and the like ; स्वीकारः svîkâraḥ, appropriation ; अधिगमः adhigamaḥ, finding , निध्यादेः nidhi âdeḥ; of hidden treasury and the like ; प्राप्तिः prâptiḥ, discovery, एतेषु eteṣu, these, निमित्तेषु nimitteṣu, the causes ; सत्सु satsu, being, एतेषु...... सत्सु, if these causes exist , स्वामी svâmî, owner ; भवति bhavati, becomes ; कृतेषु kriteṣu, if they take place, ज्ञायते jñayate, is known, becomes ; स्वामी svâmî, proprietor ; ब्राह्मणस्य brâhmaṇasya, for a brâhmaṇa, अधिकम् adhikam, additional , लब्धम् labdham, that which is obtained , इति iti, so , ब्राह्मणस्य brâhmaṇasya, for a brâhmaṇa ; प्रतिग्रहादिना pratigrahâdinâ, by acceptance etc. ; यद् yad, which ; लब्धम् labdham, is obtained , तद् tad, that , अधिकम् adhikam, additional ; असाधारणम् asâdhâraṇam, not common ; क्षत्रियस्य kṣatriyasya, for a kṣatriya ; विजितम् vijitam, what is obtained by victory ; इति iti, so ; अत्र atra, here ; अधिकम् adhikam, additional , इति॰ iti, this (the word additional) ; अनुवर्तते anuvartate, is understood, follows, is repeated ; क्षत्रियस्य kṣatriyasya, for a kṣatriya , विजय vijaya, by victory , दण्ड-आदि daṇḍa âdi, or by amercement or the like , लब्धम् labdham, is obtained ; असाधारणम् asâdhâraṇam, not common (to all the tribes) निर्विष्टम् nirviṣṭam, what is earned ; वैश्य-

शूद्रयो vaiśya śudrayoh for a vaiśya and śudra, इति iti, so अत्र atra, here, अपि api too, अधिकम् adhikam, the word 'additional', इति iti, this, अनुवर्तते anuvartate 'is repeated' is understood, वैश्यस्य vaiśyasya, for a vaiśya, कृषि krishi, by agriculture गोरक्षादि gorakshâdi, by keeping of cattle etc लब्धम् labdham, obtained, निर्विष्टम् nirvishtam earned, तद् tad, that, असाधारणम् asâdhâranam, peculiar, शूद्रस्य śudrasya, for a śudra, द्विजशुश्रूषया dvija śuśrûshâdinâ, by means of service of the twice-born, भृतिरूपेण bhriti rûpena, in the form of of wages यद् yad, which, लब्धम् labdham, obtained, तद् tad, that, असाधारणम् asâdhârnam, is peculiar, एवम् evam, so, अनुलोमजानाम् anulomajânâm, to certain classes mixed in the natural order of tribes; प्रतिलोमजानाम् pratilomajânâm, to certain classes mixed in the reverse order of tribes, च cha, and, लोकप्रसिद्धेषु lokprasiddeshu, which are familiar to mankind स्वत्वहेतुषु svatvahetushu, among the causes of property, यद् यद् yad yad, whatever, असाधारणम् asâdhârnam, peculiar, उक्तम् uktam, has been stated, सूतानाम् sûtânâm, of the sûtas, अश्वसारथ्यम् aśvasârathyam, the driving of horses, इत्यादि iti âdi, and so forth तत् तत् tat tat, that, सर्वम् sarvam, all, निर्विष्टशब्देन nirvishta sabdena, by the word 'nirvishta' i e 'earned', उच्यते uchyate, is indicated, सर्वस्य sarvasya, all (such acquisitions), अपि api, also भृतरूपत्वात् bhritirûpatvât, for they assume the form of wages भृति, निर्वेश nirveśah wages भृति-भोगयोः bhriti-bhogayoh in the sense of wages and enjoyment, इति iti, so; त्रिकाण्डी-स्मरणात् trikândi smarnât,as indicated by the dictionary of Amara which has three parts i e (काण्ड) kandas, तत् तत् tat tat, all that, असाधारणम् asâdhâranam, as peculiar, वेदितव्यम् veditavyam, should be understood

13. Unobstructed heritage is here denominated "inheritance." "Purchase" is well known. "Partition" means heritage subject to obstruction. "Occupation" or seizure is the appropriation of water, grass, wood and the like not previously appertaining to any other [person as owner.] "Finding" is the discovery of a hidden treasure or the like. 'If these reasons exist, the person is owner.' If they take place, he becomes proprietor 'For a Brahmana, that which is obtained by acceptance or the like, is additional, not common [to all the tribes] "Additional" is understood in the subsequent sentence, 'for a Kshatriya, what is obtained by victory, or by amercement or the like, is peculiar' In the next sentence, "additional" is again understood "what is gained or earned by agriculture, keeping of cattle, [traffic,] and so

forth, is for a Vaisya peculiar; and so is, for a Śûdra, that which is earned in the form of wages, by obedience to the regenerate classes and by similar means." Thus likewise, among the various causes of property which are familiar to mankind, whatever has been stated as peculiar to certain mixed classes in the direct or inverse order of the tribes, (as the driving of horses, which is the profession of the sutas, and so forth,) is indicated by the word "earned" (nirviṣta): for all such acquisitions assume the form of wages or hire; and the noun (nirveśâ) is explained in the Trikandi as signifying wages.

Bâlambhatta's gloss.

Here (tatra) means 'of those'; 'not previously appertaining to any other' 'of that which is not owned by any one' (res nullius); having explained the categories, he proceeds to explain the meaning of the passage. 'They', is to show the appropriateness of what is laid down; 'becomes' shows that every thing is with that object. "If these reasons exist, the person is owner" means if these reasons are known (to exist) the owner is known; by this, the view of the objector is repelled, because there is success with that object. He proceeds to explain the meaning of the succeeding passage. 'For a Brahman', over and above; he says by filling up the ellipsis by reason of its inherent power, being in conformity with another text and being concomitant with it. 'Acceptance'; additional' shows 'its excellence': 'peculiar' i. e. 'conquered' is a figurative expression standing for victory. 'Amercement'; 'additional' is understood': it is the reading. He says with the object of earning for enjoyment; agriculture etc., include earning by trade etc. In order to remove the anomaly, he applies the said principle elsewhere. 'Thus, likewise'; 'they are peculiar of those which end in the genitive case' should be connected here also; "among the causes of the proprietary right" means 'of them': 'all that' means 'of them.'

Mitâkṣarâ

यद्यपि पत्नी दुहितरश्चेत्यादिस्मरणं तत्रापि स्वामिसम्बन्धितया बहुषु दायविभागितया प्राप्तेषु लोकप्रसिद्धेऽपि स्वत्वे व्यामोहनिवृत्त्यर्थं स्मरणमिति सर्वमनवद्यम् ॥ १४॥

यद्यपि yadi api, as; पत्नी patnî, the wife (that has become the widow); दुहितरः duhitaraḥ, daughters; च chha, and; इत्यादि itiâdi, etc स्मरणम् smaraṇam, the declaration, तत्र tatra, there, in that text; अपि api, too; स्वामीसम्बन्धितया svâmisambandhitayâ, by reason of their affinity to the late owner; बहुषु bahuṣu, among many persons, दायविभागितया dâya vibhâgitayâ, because they (are supposed to be) entitled to share (विभागि) the heritage (दाय); प्राप्तेषु prâpteṣu, being supposed, when they are supposed to be etc.

लोकप्रसिद्धे loka prasiddhe, though it is a matter familiar to the world, अपि api, even स्वत्वे svatve, the proprietary right, व्यामोह vyâmoha, mistake, निवृत्त्यर्थम् nivritti artham, for the purpose of preventing; स्मरणम् smaranam is the declaration, इति iti, therefore; सर्वम् sarvam, the whole, अनवद्यम् anvadyam, is unexpectionable

14 As for the precept respecting the succession of the widow and the daughters, &c., the declaration (of the order of succession,) even in that text is intended to prevent mistake, although the right of property be a matter familiar to the world, where many persons might (but for that declaration).

Bâlambhatta's gloss

14 If the property were temporal the text as to 'wife and daughter etc', (see II 135) would be contradictory, because by reason of the absence of the owner the wife etc, have been declared entitled In order to remove the anomaly arising by the way, though not explained before and stated merely by Gautama, he states 'Although' etc, 'there also' means 'in the text'; 'in their absence' is understood There is another reading 'order of succession' (krama smaranam), otherwise 'even there' becomes incongruous In this way, the semblance of contradiction with other smritis should be removed, there is then, no contradiction of the texts

Here it should be borne in mind, what is that proprietary right which is said to be temporal by the siddhânti (propounder)? It is not an object of the means prohibited by the scripture but of lawful and free modes of transactions of sale and acceptance of gift, it can not be known by the external organs of sense it may be said that the special mental cognition of the acceptance etc, being the object of special mental cognition and the statement with the object of its impropriety are nearly explained Because even after the cessation of the acceptance, there is the accrual of proprietary right by virtue of the transaction, e g, by gift etc, the proprietary right ceases (in one) and is created (in another) by acceptance etc If that were not so by reason of accepting the cessation (of the ownership) by gift and its creation by acceptance of a particular thing, even then it is an object of perception by the external organs of sense by reason of the ordinary practice 'I see the property' It is not an unwarrantable stretch of a rule, by reason of the knowledge thereof on realisation, it is like the proprietary right residing therein and the unchecked and free use thereof Therefore on not taking it into possession, on its being used freely according to one's wishes and on its seizure by the exercise of proprietary right wrongfully, there is no possession thereof From this the proprietary right is inferred, on the other hand it is not an object of sensual perception (and one can not say) I see the proprietary right as 'I perceive a smelling

sandal' Thus the view of the opponent is repelled by reason of its being refuted elsewhere

The gifts are of two kinds one is of which the fruit is visible and the other of which the fruit is not visible They are subdivided into two, one with acceptance and the other without it Although 'gift with acceptance' is mere acceptance, yet (in the passage) 'let a Brahmana earn wealth by acceptance (of gift)' by reason of the prohibition enjoined by the smriti texts as regards the acceptance of gift of horse and sesamum, the word acceptance 'of gift' (pratigraha)' means the acceptance of the donation for invisible purpose On the acceptance of sesamum and horse given as reward, no one is in fault nor is there any breach of rule as regards earning by a warrior The reward should be said to be for visible object The word (dâna) is derived from $\surd$ dâ meaning relinquishment of one's proprietary right in order to create it in another

On the other hand, the creation of the proprietary right in another does not merely depend on the relinquishment of one's proprietary right, but it must be said that it arises in reality by acceptance only On simply giving up a cow in favour of a Brahmana (saying) 'the cow belongs to the Brahman, it it not mine' even with the full knowledge of the relinquishment by all present the proprietary right arises by acceptance Therefore (in cases like) 'let one offer funeral cakes to the manes' there is the illustration of the fourth (gift without acceptance) on the suspension of the proprietary right in the thing offered to the manes by reason of the want of acceptance and by reason of the reality of dedication made to the manes in compliance with the above said meaning of $\surd$dâ Under the belief of an owner being abroad, the possession by acceptance of his relinquished property and then on the death of the owner, possession after partition of his property by his sons etc, as inheritance but not by any other are the common occurences ; otherwise there will be no offence in a stranger's taking possession of his wealh like them, as in obtaining forest grass etc In this way the acceptance of a gift should not be considered to be useless by reason of the text 'It is eight times meritorious to accept it', because of the accrual of the excessive reward on the gift of such accepted wealth On the other hand, the word of quantity is with a view to save the non use of the passage (one gives) in a context where the subject of reunion is discussed and on the creation of the joint property after the extinction of the separate property

Nor is there no extinction of proprietary right, on obviating the undue stretch of a rule by the extinction of the proprietary right, the word of quantity is useless there also by assuming the extinction of previous proprietary right by non accrual of it in the propriet r of it On accepting the exciting force of volition, there is some force ; thereby there is no extinction of the proprietary right but mere creation of the proprietary right in another on the other hand the creation of the proprietary right in one who is possessed of it, by the stimulating force of the volition is refuted It can

not be said that there is wrong in overlooking it, because by not creating proprietary right in an other, there is no applicability of the passage 'he gives' Similarly it does not apply in the case of sale by reason of its non-creation of proprietary right according to the rules In such a case to obviate the undue extension of the rule, the proprietary right arises by the previous acceptance of the sale consideration In this way, by the word 'gift etc,' the same applies in the case of sale, because the extinction and creation of the right take place in both of them It should not be said that the right arising from gift etc is useless and improper The text is with a view to support the creation of the right arising from it and inferable from the scripture even on its production from the temporal agents and inferable from the evidence thereof

Similarly by "A Brahman by acceptance of gift etc, .. .owner by inheritance" the acceptance etc, are clearly said to be essential, not by the last clause even on so describing, but by the first, the essential nature arises by earning but not by the proprietary right, earning may be said, as described previously, as constituting profit and loss the means of acquiring wealth Just like the purport of the text, 'let one who is possessed of wealth by acceptance of gifts etc, appropriate wealth by earning it', it is also acquired by the same means Therefore 'let wealth be earned by means of sacrifice etc' means that gift etc are the means of acquiring proprietary right in earning wealth by acceptance of gift etc, as explained previously The act of acceptance of gift etc, is therefore, an earning and like it, it is also a means thereof

There is the following order in the creation (of a right) in the beginning, there is relinquishment, then acceptance of gift, then earning, then proprietary right The middle two (constituents) do not exist by (the non-existence of) the first, similarly in other cases Similarly in 'creation by acceptance of gift', creation is apparently a common factor, etc, include like officiating as a priest, teaching victory, agriculture, service, relinquishment of like things, inheritance which is common and anything effected by sale There the real nature of the acceptance of gift etc, and relinquishment and sale is explained and the real nature of the acceptance of gift and finding like them is obvious By 'inheritance' (rikthā) is meant the mere relationship with the owner arising from heritage, by partition is meant the absence of the particular obstruction of that kind, their non contradictory nature was explained previously, so there is nothing wrong The partition as described previously does not create proprietory right being a part thereof (compound forming with heritage) This is the reason why Goutama and others have not included it amongst causes 'By partition arises proprietary right' is the subject for discussion according to others, in the text of Goutama the word 'samvibhâga' (partition) means 'partition'; it is not what was described previously but is well known idea (of partition) which by removing the doubt support the established truth there is then no contradiction In this way the proprietary right is inferable from enjoyment etc, perceivable by all visible means of proof, applicable to common and uncommon above said objects, extinguishable on partition like gift and

purchase, जय jayaḥ conquest प्रयोग prayogah trade, कर्मयोग: karma-yogaḥ employment च cha, and, सत्प्रतिग्रह satparigrahah, acceptance from a proper person, एव eva, also, च cha, and, इति iti, thus, मनु स्मरणात् Manu smarnât, since Manu declares

16 The purpose of the preceding disquisition is this. A text expresses "When Brahmans have acquired wealth by a blameable act, they are cleared by the abandonment of it, with prayer and rigid austerity" Now, if property be deducible only from sacred ordinances that, which has been obtained by accepting presents from an improper person, or by other means which are reprobated, would not be property, and consequently would not be partible among sons But if it be a worldly matter, then even what is obtained by such means, is property and may be divided among heirs, and the atonement above mentioned regards the acquirer only but sons have the right by inheritance, and therefore no blame attaches to them, since Manu declares, "There are seven virtuous means of acquiring property, viz., inheritance, &c."*

Bâlambhatta's gloss

Now in the present discourse, it is not proper to enquire into the real nature of the proprietary right by reason of the non use of the sub divisions into temporal and non temporal He therefore says 'The purpose of the preceding disquisition etc' 'abandonment' means 'giving up', he says 'not by that alone (but) by prayer' also he means, by this sanction of abandonment by Manu He states the view of the opponent, 'from sacred ordinances', the reprehensible is of two kinds, one that is prohibited and the other that is not laid down 'Accepting presents from an improper person', in the established truth, he removes the contradiction of the text By 'giving it up', he says by suggesting the distinction by only' (eva) 'The sons, can there be a transmission of sin like inheritance? He therefore says 'seven', these are the means to acquire wealth here the term 'inheritance' includes both inheritance and partition the word acquisition' includes acceptance by gift and finding; 'victory' includes fine; 'trade' includes agriculture etc, 'employment' includes acceptance of reward; from it both should be understood

* The sloka of Manu has not been translated by Colebrooke I give the translation from Buhler "There are seven lawful modes of acquiring property, (viz.) inheritance, finding or friendly donation purchase conquest lending at interest, the performance of work and the acceptance of gifts from virtuous men S B E XXV P 428

It is proper to discuss the subject promised according to the promise but not otherwise how is it contrary here? nor is there any other different reason by virtue of its absence There is no argument based upon series of reasons by virtue of the dependence of the present disquisition on the temporal nature of the proprietary right nor does the maxim of needle and kettle* apply here by reason of proving its temporal nature from many arguments and by seeing (no proof of) any other If you say that a subject discussed and one to be discussed are both in an unfavourable position, the reply is that it is not so Like property by the temporal nature of partition, by the non temporal nature of the rules relating to it and by the temporal nature of birth ect, the temporal nature of the proprietary right in the above said ways has already been proved, there the creation of it from of partition etc, applies but not otherwise the subject discussed is a reason and the subject to be discussed is, therefore, based on a reason Its immediate discussion is therefore, proper . it is the substance

Mitâksarâ

इदानीमिदं संदिह्यते । विभागात्स्वत्वमुत स्वस्य सतोविभागइति । १७ ॥

इदानीम् Idânîm, now, next , इदम् idam, this, it सन्दिह्यते sandihyate, is doubted , विभागात् vibhâgât, through partition , स्वत्वम् svatvam, property , उत uta, or , स्वस्य svasya, the proprietary right , सत satah, being already there , विभाग vibhâgah, partition , इति iti, thus the doubt.

17 Next, it is doubted whether property arises from partition, or the division be of an existent right

Mitâksarâ

तत्र विभागात्स्वत्वमिति तावद्युक्तम् । जातपुत्रस्याधानविधानात् । यदि जन्मनैव स्वत्वं स्यात्तदोत्पन्नस्य पुत्रस्यापि तत्स्वं साधारणमिति द्रव्यसाध्येष्वाधानादिषु पितुरनधिकारः स्यात् । १८ ॥

तत्र Tatra, of these (positions) विभागात् vibhâgât, arising from partition , स्वत्वम् svatvam, property ; इति iti, this position , तावद् tâvad, indeed , युक्तम् yuktam, right , जातपुत्रस्य jâtaputrasya, of a man to whom a son is born , आधान-विधानात् âdhâna vidhânât, because of the enjoining (विधान) (by the scripture) to maintain a holy fire (आधान) , यदि yadi, if , जन्मना janmanâ, by birth , एव eva, alone ; स्वत्वम् svatvam, property , स्यात् syât, would be , तदा tadâ, then , उत्पन्नस्य utpannasya, of one just born , पुत्रस्य putrasya, of a son , अपि api, even , तत् tat, that , स्वम् svam,

* When there are two acts to be performed, one easier and the other more difficult, at a time, the easier one should be performed first

property estate ; साधारणम् sâdhâranam, would be common ; इति iti, and, hence , द्रव्यसाध्येषु dravya-sâdhyeṣu, that are accomplished by the use (साध्य) of wealth (द्रव्य) . आधानादिषु âdhânâdiṣu, in matters such as maintaining the sacred fire etc पितुः pituḥ, of the father ; अनधिकारः anadhikâraḥ, inability ; स्यात् syât, there would be.

18. Of these (positions), that of property arising from partition is right, since a man, to whom a son is born, is enjoined to maintain a holy fire: for, were property vested by birth alone, the estate would be common to the son as soon as born ; and the father would not be competent to maintain a sacrificial fire, and perform other religious duties which are accomplished by the use of wealth.

Bâlambhatta's gloss.

17 and 18 Harping on the same, he says, now (idanim) meaning next; so it should be understood that with the said object the word 'now' is used 'It is doubted'; he supports the enunciated proposition containing the above-said doubt in the enunciated proposition first. Is it from partition'? 'There' (tatra), means 'between two.' 'Born', he means 'let one who has black hair and to whom a son is born, maintain a holy fire', there the word 'son' stands for all descendants or it is bahuvrihi according to the rule embodied in Panini I 2. 64 : 'one who has got black hair' shows youth or competency. One who is thus entitled, should consecrate the holy fire, this is the meaning. Even if *it is a mandatory text with respect to it, how does proprietary right arise* therefrom? He, therefore, gives a reply. 'If by birth', 'alone' is for contrast. Born' means by his becoming an equal owner in the property, it becomes common property. He says, 'the estate', 'in the maintenance of the holy fire etc' means the ceremonies to be performed by the husband and wife only: 'etc.' include the donations in the necessary funeral and natal ceremonies.

Mitâkṣarâ.

तथा विभागात्प्राक्पितृप्रसाद लब्धस्य विभागप्रतिषेधोनोपपद्यते । सर्वानुमत्या दत्तत्वाद्विभागप्राप्त्यभावात् । यथाह । शौर्यभार्याधने चोभे यच्च विद्याधनं भवेत् । त्रीण्येतान्यविभाज्यानि प्रसादोयश्च पैतृकइति । १९ ॥

तथा Tathâ, like-wise , विभागात् vibhâgât, separation ; प्राक् prâk, before ; पितृप्रसाद pitri-prasâda, through the liberality (प्रसाद) of the father ; लब्धस्य labdhasya, of what is obtained , विभाग-प्रतिषेधः vibhâga-pratiṣedhaḥ, the prohibition of a division . न na, not , उपपद्यते upapadyate, would be pertinent . सर्वानुमत्या sarva-anumatyâ, by the consent (अनुमति) of all the

parties, दत्तत्वात् dattatvât because of its being given, विभागप्राप्ति vibhaga-prâpti, of the supposition of partition अभावात् abhâvât, because of the absence, यथा yathâ, as आह âha, says, शौर्य-भार्या-धने śaurya bhârya dhane wealth by valour and wealth of a wife, च cha and उभे ubhe, both, यत् yat, which, च cha, again, विद्याधनम् vidyâdhanam, wealth acquired by science, भवेत् bhavet, would be, त्रीणि trîni, three, एतानि etâni, there, अविभाज्यानि avibhâjyâni, exempt from partition, प्रसादः prasâdaḥ, a favour, यः yaḥ, which is, च cha, and, पैतृकः paitrikaḥ, conferred by a father, इति iti, so

19. Likewise the prohibition of a division of that, which is obtained from the liberality of the father previous to separation, would not be pertinent since no partition of it can be supposed, for it has been given by consent of all parties. But Nârada does propound such a prohibition "Excepting what is gained by valour, the wealth of a wife, and what is acquired by science, which are three sorts of property exempt from partition, and any favour conferred by a father."

Bâlambhatta's gloss

19 If you say that the right in question arises under a text, then by reason of the antecedent prohibition there can be a partition in case of a donation made by favour, it is not so, so he shows the irrelevancy of the prohibition 'Likewise', he says in order to refute the other conflicting reason 'all', in that case under those circumstances by reason of having both the right of making a gift and accepting it and the subsequent failure of the cause, it fails It is, therefore irrelevant, and the text is like a sky-flower (impossible) Nârada therefore, says, 'so he says' in the wealth acquired by valour and the wife, so also before, therefore (the meaning is) what is obtained by valour according to Brihaspati and the gains of science obtained by valour according to Vyâsa also constitute wealth 'And which', another reading is preferable to 'whose', paternal" in the sense coming from the father is derived by adding ठञ् as an affix under, 'And यत् after pitri (Panini IV, 3 79)*

Mitâkarâ

तथा । भर्त्रा प्रीतेन यद्दत्तं स्त्रियै तस्मिन्मृते ऽपि तत् । सा यथाकाममश्नीयाद्दद्या द्वा स्थावरादृते इति प्रीतिदानवचनं नोपपद्यते ॥ तज्जन्मनैव स्वत्वे न च स्थावरादृते यद्दत्तमिति संबन्धोयुक्तोऽन्यथहितयोअनाप्रकात । २० ॥

* The sutra means यत् will be added after पितृ and ठञ् will be added in the sense of coming from there.

तथा tathā so, भर्त्रा bhartrā by husband, प्रीतेन prītena, affectionate, यद् yad, which, दत्तम् dattam, is given, स्त्रियै striyai, to a wife, तस्मिन् tasmin, on his, मृते mṛte, being deceased, when he is dead, अपि api, also, तत् tat, that, सा sā, she, यथाकामम् yathākāmam, as she pleases, अश्नीयात् aśnīyāt, may consume—enjoy, दद्यात् dadyāt, may give away, वा vā, or, स्थावरात् sthāvarāt, immoveable property, ऋते ṛte, excepting, इति iti, this, प्रीतिदान prītidāna, covering an affectionate gift वचनम् vachanam, the text; न na, not, उपपद्यते upapadyate, would be pertinent, तद् tad, that, जन्मना janmanā, by birth, एव eva, alone, स्वत्वे svatve, if property were, न na, not, च cha, and, nor; स्थावरात् sthāvarād, immoveable property, ऋते ṛte, excepting, यद् yad, which, दत्तम् dattam, is given, इति iti, so, thus, of these terms, सम्बन्धः sambandhaḥ, connection, युक्तः yuktaḥ, right, व्यवहित vyavahita, of disjointed words; योजना yojanā, construction प्रसङ्गात् prasangāt, there would be an occasion for .

20. So the text concerning an affectionate gift, (What has been given by an affectionate husband to his wife, she may consume as she pleases, when he is dead, or may give it away, excepting immovable property",) would not be pertinent, if property were vested by birth alone. Nor is it right to connect the words, "excepting immovable property" with the terms "what has been given" (in the text last cited), for that would be a *forced construtcion by connection of disjointed terms*

Bâlambhatta's gloss

20 If there is no consent of all, it relates to that subject and there is no fault he then points out another defect 'So' he cites from Vishnu 'by the husband,' he says so by reason of two kinds of gifts, 'affection,' by common etc In that case by reason of the incapacity of the recently born infant in giving consent, although he has proprietary right thereon, of the incapacity of one to grant by reason of the property being common and thereby the impossibility of any gift out of affection, the text in support of it is contrary It is the meaning, is it even so when it (*prohibition*) is connected with the immoveable property in the succeeding clause? It is not so there is no conflict of texts but harmony, so he doubts 'And not', being not connected with eating etc and that being not prohibited but being connected with the affectionat gift and the prohibition pertaining to the immoveable property, *the spirit of law applies there but nowhere else*, 'there', by the birth thereof, the proprietary right is laid down It is the meaning 'Disconnected'; on connecting them thus, it would be so, but it is not so, by reason of such connection not arising, because of the intervention of the obstruction If it is so, even by reading together the two

different texts unconnected by reason of the prohibition of the gift of the immovable property, the proprietary right arises by birth but not by partition, with this object he doubts

Mitâksarâ

यदपि । मणिमुक्ताप्रवालानां सर्वस्यैव पिता प्रभुः। स्थावरस्य तु सर्वस्य न पिता न पितामहः ॥ तथा । पितृप्रसादाद्भुज्यन्ते वस्त्राण्याभरणानि च । स्थावरं तु न भुज्येत प्रसादे सति पैतृके इति ॥ स्थावरस्य प्रसादादिह न प्रतिषेधवचनं तत्पितामहोपात्तस्थावरविषयम् । अतीते पितामहे तद्धनं पितापुत्रयोः साधारणमपि मणिमुक्तादि पितुरेव । स्थावरं तु साधारणमित्यस्मादेव वचनादवगम्यते । २१ ॥

यद् yad, अपि api, which again, as for, मणि mani, of the gems, मुक्ता muktâ of pearls प्रवालानाम् pravâlânâm, and of corals, सर्वस्य sarvasya of all, एव eva, indeed, पिता pitâ, the father प्रभु prabhuh, the owner, स्थावरस्य sthâvarasya, of the immovable property, तु tu, but, सर्वस्य sarvasya, of all, न na, neither, पिता pitâ the father, न na nor, पितामह pitâmahah, the grand father, तथा tathâ, similarly, पितृप्रसादात् pitri prasâdâd, through the favour of the father, भुज्यन्ते bhujyante, are enjoyed, वस्त्राणि vastrâni, clothes, आभरणानि âbharnâni ornaments, च cha, and, स्थावरम् sthâvaram, immovable, तु tu, but, न na, not, भुज्येत bhujyate, should be used, प्रसादे prasâde, through the indulgence, सति sati, there would be, पैतृके paitrike, of the father, इति iti, this, स्थावरस्य sthâvarasya, of regarding immovable property प्रसादात् prasâdâd, through favour, इह iha, here, न na, not, प्रतिषेध pratisadha, of prohibition, वचनम् vachanam, passage, तत् tat, that, पितामह pitâmaha, by the grandfather, उपात्त upâtta acquired, स्थावर-विषयम् sthâvara visayam, about immovable property, अतीते atite, if dead, पितामहे pitâmahe, the grand father, तद्धनम् taddhanam, his wealth, पितापुत्रयोः pitâputrayoh, of the father and son, साधारणम् sâdhâranam common, अपि api, but, मणि mani, gems, मुक्तादि muktâdi, pearls etc, पितुः pituh, belong to the father, एव eva, only, स्थावरम् sthâvaram, the immovable property, तु tu, but, साधारणम् sâdhâranam, common इति iti, so, this, अस्माद् asmâd, from this, एव eva, very, वचनात् vachanâd, passage, अवगम्यते avagamyate, is seen, appears

21. As for the text "The father is master of the gems, pearls, and corals, and of all (other movable property,) but neither the father, nor the grandfather, is so of the whole immovable estate", and this other passage, 'By favour of the father, clothes, and

ornaments are used, but immovable property may not be consumed, even with the father's indulgence"; which passages forbid a gift of immov ble property through favour: they both relate to immovables which have descended from the paternal grand-father, when the grand-father dies, his effects become the common property of the father and sons; but it appears from this text alone, that the gem , pearls and other movables belong exclusively to the father, while the immovable estate remains common.

Bâlambhatta's gloss.

21. 'Although'; this means two verses from Narada: 'of corals' II is in the genitive case for singling them out or for being connected by reason of their being of the same category. Though falling under the same category by reason of the same declension, yet the same text does not apply to them by reason of the contrary application of 'the Vedas are authorities', by the inverted order, *eva* is to be distinguished; no other than the immovable property but the immovable property only. The entire passage has, therefore, a significance; he says by suggesting an implied and additional sense; Immovable property'; he suggests the desired unity; 'of all' in the following passage also. 'By the favour of the father, available''; 'on being' even on being ; 'in the affectionate gift'. it is in the locative case to indicate a subject, 'prohibitory text'; it is in singular being applicable to a class, similary in the succeeding. When there is 'co ownership in the immovable property, the application of the maxim called 'half an aged woman'* 'does not apply in the case of the pearls and corals. Therefore, he says ', when the grandfather dies,' so it is under the rule sanctioned by the text, there is nothing wrong in it.

Mitâkṣrâ.

तस्मान्न जन्मना स्वत्वं किंतु स्वामिनाशाद्विभागाद्वा स्वत्वम् । अतएव पितुरूर्ध्वं विभागात्प्रागुद्रव्यस्वत्वस्य ग्रहीणत्वात्पन्येन गृह्यमाणं न निवार्यतइति चोद्यस्यानवकाशः । तथैकपुत्रस्यापि पितृप्रयाणादेव पुत्रस्य स्वमिति न विभागमपेक्षत इति ॥२२॥

तस्माद् tasmâd, therefore ; न na, not ; जन्मना janmanâ, by birth ; स्वत्वम् svatvam, property , किंतु kintu, but ; स्वामि-नाशाद् svâmi-nâśâd, after the death of the owner ; विभागाद् vibhâgâd, by a partition ; वा vâ, or ; स्वत्वम् svatvam, property ; अतः ataḥ, hence ; एव eva, indeed ; पितुः pituḥ,

* The maxim applies when you keep a half of a hen for laying down eggs and the other half for cooking. It is impossible to divide a thing into two, so as to keep one part for one purpose and the other for a different object. The maxim, therefore, means that the text can not be broken into two parts so as to apply to different and contrary objects (See also Jacob's Laukika Nyâyânjali.

the father ; ऊर्ध्वम् ûrdhvam, after ; विभागात् vibhâgât, the partition ; प्राक् prâk, before ; द्रव्यः dravyaḥ, of the wealth , स्वत्वस्य svatvasya, of the proprietary right ; प्रहीणत्वात् prahiṇatvât, because of the loss of ; अन्येन anyena, by some other person, a stranger ; गृह्यमाणम् grihyamâṇam, being snatched away ; न na, not ; निवार्यते nivâryate, prevented ; इति iti, so, this ; चोद्यस्य chodyasya, for an objection, supposition ; अनवकाशः anavakâśaḥ, there is no room for ; तथा tathâ, likewise, so , एकपुत्रस्य eka-putrasya, in the case of an only son , अपि api, also , पितृ-प्रयाणात् pitri-prayâṇâd, by the demise of the father , एव eva, only, just , पुत्रस्य putrasya, of the son ; स्वम् svam, the property ; इति iti, therefore , न na, not ; विभागम् vibhâgam, partition ; अपेक्षते apekṣate, does require , इति iti, so.

22. Therefore property is not by birth, but by demise of the owner, or by partition. Accordingly (since the demise of the owner is a cause of property) there is no room for supposing, that a stranger could not be prevented from taking the effects because the property was vacant, after the death of the father before partition. So likewise, in the case of an only son, the estate becomes the property of the son by the father's decease, and does not require partition.

Bâlambhatta's gloss.

22 He concludes the purvakṣa (opponent's view), 'therefore': it means this. By acquisition, the property belongs to the acquirer, then it passes to his relatives or sons by partition or on demise of the owner. When the owner is alive, the partition is the cause of the proprietary right

When the proprietor is dead, his death is the cause of the proprietary right. There is another peculiar feature, when the owner's relative, son or grandson is single and the owner is divided or single there is the cause of the uncommon proprietary right on the death of the owner but when they are many, the property becomes common (of all) on the death of the owner but separate on partition In this state of the owner on the demise of the grandfather by reason of the absence of the separate property of the father before partition in the grandfather's property, one should not make a gift of the ancestral property out of affection. This prohibition relates to the gift of such immovable, but not to the self acquired property by reason of the proprietary right arising by birth Because the death of the owner is also a cause of the proprietary right, therefore on the death of the father before partition, like the property of a stranger, being an object of indifference does not become property, so he says, 'accordingly', means by accepting the death of the father : 'vacant' means in

the absence of the owner asserting the right. Having explained its necessity in the case of many sons he shows the necessity thereof in the case of one son ; 'so likewise' means like it; by 'decease' means by death the sentence means that the property of such *prepositus* who has got only one son, becomes vested in the son on his death only, but does not stand in need of partition. Only (*eva*) is in antithesis with 'not', (does not require).

Mitākṣarā

अत्रोच्यते । लोकप्रसिद्धमेव स्वत्वमित्युक्तम् ॥ लोके च पुत्रादीनां जन्मनैव स्वत्वं प्रसिद्धतरं नापह्नवमर्हति । विभागशब्दश्च बहुस्वामिकधनविषयोलोकप्रसिद्धोनान्यदीयविषयो :न प्रहीणविषयः । तं तथोत्पत्त्यैवार्थस्वामित्वं लभेतेत्याचार्याइति गौतमवचनाच्च । २३ ॥

अत्र atra, here, as regards this ; उच्यते uchyate, it is said ; लोकप्रसिद्धम् lokaprasiddham, a matter of popular recognition ; एव eva, indeed ; स्वत्वम् svatvam, property ; इति iti, so ; उक्तम् uktam, it is said ; लोके loke, in the world, च cha, and ; पुत्रादीनाम् putrādinām, of a son etc. ; जन्मना janmanā, by birth ; एव eva, indeed ; स्वत्वम् svatvam, property ; प्रसिद्धतरम् prasiddhataram, better known ; न na, not ; अपह्नवम् apahnavam, denial, contradiction ; अर्हति arhati, deserves ; विभागशब्दः vibhāga śabdaḥ, the word partition ; च cha, and ; बहु-स्वामिक bahu svāmika, such as may have many owners ; धन-विषयः dhana-viṣayaḥ, about such wealth as etc लोकप्रसिद्धः loka-prasiddhaḥ, very familiar to the world ; न na, not ; अन्यदीयविषयः anyadīya-viṣayaḥ, pertaining to that which relates to another ; न na, nor ; *प्रहीण-विषयः prahīṇa-viṣyaḥ, appertaining to vacant property* ; तम् tam, him ; तथा tathā, so ; उत्पत्त्या utpatyā, by birth ; अर्थ-स्वामित्वम्, artha-svāmitvam, ownership of wealth ; एव eva, indeed, लभेत labheta, may reach or may be taken ; इति *iti*, so, *direct*, आचार्याः āchāryāḥ, the venerable teachers : इति iti, so ; गौतमवचनात् Gautam-vachanāt, from the text of Gautama ; च cha, and.

23. To this the answer is : It has been shown, that property is a matter of popular recognition ; and the right of sons and the rest, by birth, is most familiar, to the world, as cannot be denied : but the term partition is generally understood to relate to effects belonging to several owners and does not relate to that which appertains to another, nor to goods vacant, or unowned. For the text of Gautama expresses, "Let ownership of wealth be taken by birth; as the venerable teachers direct."

Bâlambhatta's gloss

23 Having thus explained the purvapakṣa view (of the opponent) he sets forth the siddhânta (established) view 'To this the answer is etc' he reiterates the same here to suggest the the reason of the previous established truth 'Amongst people he means that it is so recognised by the people 'and popular recognition' shows the necessity of the reality of the excellence on accepting it No denial', he gives another reason 'partition' has already been explained previously 'unowned' ('vacant') not also without wealth 'is generally accepted,' is to be repeated He cites Gautama's text in support of it, similarly by birth 'similary' is to denote conjunction, the meaning is that the teachers hold that the property should be taken by one by reason of the proprietary right in the inheritance from one's birth there is another reading 'by reason of there being no owner' but there is another reading 'the ownership of the property' which often occurs and is preferable and 'under the text' (vachanat) is an incorrect reading

Mitâkṣarâ

मणिमुक्ताप्रवालानामित्यादि वचनं च जन्मना स्वत्वपक्षएवोपपद्यते । न च पितामहोपात्तस्थावरविषयमिति युक्तम् । न पिता न पितामहइति वचनात् । पितामहस्य हि स्वार्जितमपि पुत्रे पौत्रे च सत्यदेयमिति वचनं जन्मना स्वत्वं गमयति । तथा परमते मणिमुक्ताप्रवालादीनां पैतामहानामपि पितुरेव स्वत्वं वचनात् । एवमस्मन्मतेऽपि पित्रार्जितानामप्येतेषां पितुर्दानाधिकारो वचनादित्यविशेषः । २४ ॥

मणि mani, of gems मुक्ता muktâ, of pearls, प्रवालानाम् pravâlânâm, and of corals इत्यादि iti âdi, this and the following, वचनम् vachanam, text च cha, again, जन्मना janmanâ being vested by birth, स्वत्वपक्षे svatva pakṣe, on the supposition of proprietary right, एव eva, only, उपपद्यते upapadyate, is pertinent, न na, not, च cha and, पितामह pitâmaha, by the grandfather, उपात्त upâtta, acquired, स्थावर विषयम् sthâvara viṣayam, concerning the immovable property, इति iti, this, युक्तम् yuktam is right, न na, not, neither, पिता pitâ, the father, न no, not, पितामह pitâmaha, the grandfather, इति iti, this वचनात् vachanât, from this text, पितामहस्य pitâmahasya, the grand father's, हि hi, because, स्वार्जितम् svârjitam own acquisition, अपि api also, पुत्रे putre, the son, पौत्र pautre, the grand son, च cha and, सति sati being alive, present, living, अदेयम् adeyam, is not to be given, इति iti, thus वचनम् vachanam, maxim, जन्मना janmanâ, by birth, स्वत्वम् svatvam, a proprietary interest, गमयति gamayati, indicates, तथा tathâ, as, परमते para mate, according to the other opinion, मणि mani, the gems, मुक्ता muktâ,

pearls ; वस्त्र vastra, clothes ; आभरणादीनाम् ābharaṇādīnām, *ornaments and other effects* ; पैतामहानाम् paitāmahānām, belonging to the grandfather and inherited from him ; अपि api, though ; पितुः pituḥ, are the father's ; स्वत्वम् svatvam, property ; वचनात् vachanāt under special provisions of the law ; एवम् evam ; thus ; अस्मन्मते asman-mate, according to our opinion ; अपि api, also ; पित्रा pitrā, by his father ; अर्जितम् arjitam, acquired ; अपि api, though ; एतेषाम् eteṣām, these ; पितुः pituḥ, the father's ; दान-अधिकारः dāna-adhikāraḥ, the right to give ; वचनात् vachanāt, these being an authority of a text ; इति iti, these words ; अविशेषः aviśeṣaḥ, are (of course) common.

24. Moreover, the text above cited, "The father is master of the gems, pearls, &c.", (§21) is pertinent on the supposition of a proprietary right vested by *birth*. *Nor is it right* to affirm, that it relates to immovables which have descended from the paternal grandfather : since the text expresses "neither the father, nor the grandfather." The maxim, that the grandfather's own acquisition should not be given away while a son or grandson is living, indicates a proprietary interest by birth. As, according to the other opinion, the precious stones, pearls, clothes, ornaments, and other effects, though inherited from the grandfather, belong to the father under the special provisions of the law ; so, according to our opinion, the father has power, under the same text, to give away such effects, though acquired by his father. There is no difference

Bālambhaṭṭa's gloss.

24 (He says that the passage) 'gems, pearls etc,' fits in with the established truth (siddhanta view). 'gem', by 'etc.' is meant an acceptance of a gift arising from the text. Having thus accomplished the object, he exposes the perverseness 'of the critic's statement. 'Nor the grandfather,' he gives a reason to show its inappropriateness 'Neither father', the meaning is that by the accrual of the proprietary right with the death of the propositus, even on the jointness of the father and son on the death of the grandfather in his property, the gems etc. under the text belong to the father alone but the immovable property is common If the previously said meaning is clear from the text, the previously laid down rule is applicable It is not so, if the immovable property is acquired by the grandfather, then during his life time in the self-acquisitions, there is no applicability of the fourth passage (gift without acceptance) to suggest the want of ownership. It may be, therefore, said that the statement to the effect that the immoveable property is the

common property of all, is not appropriate and does not relate to it To what subject do those two texts apply, so that they may be relevant under the present discussion? He replies, 'the grandfathers', 'hi means because, the maxim refers to two texts it means that both the texts point to the proprietary right arising with the birth

How can there be an affectionate gift of the gems and pearls, if there is common proprietary right with the birth alone? On this question being raised, out of deference he replies, 'as', 'other', means the objector, he says with that object 'garment' 'According to our opinion' means in the established truth also (siddhânta view) there is another reading 'self acquired' instead of 'acquired by his father' He means that in the same way a father is competent to make a gift of self-acquired chattels with the exception of the immovable property even without the validating consent

Mitâksarâ

यत्तु भर्त्रा प्रीतेनेत्यादिविष्णुवचनं स्थावरस्य प्रीतदानज्ञापन तत्स्वोपार्जितस्यापि पुत्राद्यभ्यनुज्ञयैवेति व्याख्येयम् । पूर्वोक्तैर्मणिमुक्तादिवचनैः स्थावरव्यतिरिक्तस्यैव प्रीतदानयोग्यत्वनिश्चयात् ॥ २५ ॥

यत् yat, that, तु tu but, again, भर्त्रा bhartrâ, by the husband, प्रीतेन pritena, by the pleased one or affectionate one, इति आदि iti âdi, these and the other, विष्णुवचनम् viṣṇu vachanam words of Viṣṇu, स्थावरस्य sthâvarasya, of an immovable property, प्रीतिदान priti dâna, an affectionate gift, ज्ञापनम् jñâpanam, indicating, तत् tat, that, स्व उपार्जितस्य sva upârajitasya, of what is his own acquisition, अपि api, though, पुत्रादि putrâdi, of sons and others, अभ्यनुज्ञया abhyanujñaya, with the consent, or permission, एव eva, only, इति iti, so, व्याख्येयम् vyâkhyeyam, to be interpreted, पूर्वोक्तैः pûrvoktaiḥ, by what are cited above, मणि mani, gems, मुक्तादि muktâdi, pearls etc., वचनैः vachanaiḥ, by the passages, स्थावरव्यतिरिक्तस्य sthâvara vyatiriktasya, of what is other than immovables, एवम् evam, thus, प्रीतिदान priti dâna, for making an affectionate gift योग्यत्व yogyatva of fitness, निश्चयात् nischayât, because of the certainty of

25 *But the text of* Vishnu's (§20), which mentions a gift of immovables bestowed through affection, must be interpreted as relating to property acquired by the father himself and given with the consent of his son and the rest: for, by the passage (above cited, as well as others not quoted, viz) "The father is master of the gems, pearls, &c," the fitness of any other but immovables for an affectionate gift was certain

Bâlambhatta's gloss.

25 Is not the text of Vishnu similarly against the affectionate gift of the immovable property? He, therefore, replies 'as to...by the husband'; it refers to the gift made by the husband in favour of his wife 'suggesting' (jnâpanam) is from ज्ञप in the instrumental sense and is used for suggester' (jnâpaka): at many places the same reading occurs 'That acquired by himself' means that there is no right of making a gift even of the self acquired immovable property without the consent of the capable members but in other cases it does not stand in need of it. So in the immovable property gifted by the husband, (the wife) can live till her life without making a gift or sale without necessity. Here by using 'husband', it shows the absolute estate in a gift made by the father-in-law. Therefore, Brihaspati says "whatever immoveable and other properties are given to a female by her father in-law, can not be resumed even, by the sons under any circumstance." He assigns a reason to show the appropriateness of Vishnu's text, 'above-cited' from the plural 'the uncited texts' should be understood, it will be clear subsequently: 'by the passages' is in the 3rd form of declension 'being' an instrumental case. There is, therefore, no non-applicability of the compound (samâsa) by reason of the certainty of fitness.

Mitâksrâ

यदप्यर्थसाध्येषु वैदिकेषु कर्मस्वनधिकार इति तत्र तद्विधानबलादेवाधिकारो गम्यते । २६ ॥

यद् yad, which ; अपि api, again, as for, अर्थ-साध्येषु ; artha sâdhyeshu, that can be accomplished by the use of wealth, वैदिकेषु vaidikeshu, that are prescribed by the Vedas ; कर्मसु karmasu, for the religious duties (that etc.), अनधिकारः anadhikârah, inability ; इति iti, so ; तत्र tatra, as regards these rites ; तद्-विधान-बलाद् tad-vidhâna balâd, from the cogency of the precept which enjoins their performance, एव eva, indeed; अधिकारः adhikârah, sufficient power, गम्यते gamyate, is inferred.

26. As for the alleged disqualification for religious duties which are presented by the Veda, and which require for their accomplishment the use of wealth (§18) sufficient power for such purposes is inferred from the cogency of the precept (which enjoins their performance).

Bâlambhatta' gloss

26. He refutes the first argument; he means that there is an authority conferred under the text.

Mitâksarâ

तस्मात्पैतृके पैतामहे च द्रव्ये जन्मनैवस्वत्वम् । तथापि पितुरावश्यकेषु धर्मकृत्येषु वाचनिकेषु प्रसाददानकुटुम्बभरणापद्विमोचनादिषु च स्थावरव्यतिरिक्तद्रव्यविनियोगे स्वातंत्र्यमिति स्थितम् । स्थावरे तु स्वार्जिते पित्रादिप्राप्ते च पुत्रादिपारतन्त्र्यमेव । स्थावरं द्विपदं चैव यद्यपि स्वयमर्जितम् । असंभूय सुतान्सर्वान्न दानं न च विक्रयः ॥ ये जाता येऽप्यजाताश्च ये च गर्भे व्यवस्थिताः । वृत्तिं च तेऽभिकाङ्क्षन्ति न दानं न च विक्रय इत्यादिस्मरणात् । २७ ॥

तस्मात् tasmâd, therefore , पैतृके paitrike, in the paternal , पैतामहे paitâmahe, in the ancestral ; च cha, and , द्रव्ये dravye, (in the) estate , जन्मना janmanâ, by birth , एव eva, indeed , स्वत्वम् svatvam, property , तथापि tathâpi yet , पितुः pituh of the father, the father has , आवश्यकेषु âvaśyakesu, for indispensable, necessary , धर्मकृत्येषु dharma-krityesu, acts of duty , वाचनिकेषु vâchanikesu for purposes prescribed by texts of law , प्रसाद दान prasâd dâna, gifts of affection कुटुम्ब भरण kutumb bharana, support of the family , आपद्विमोचनादिषु âpad vimokshâdisu, relief from distress and so forth , च cha, and , स्थावर व्यतिरिक्त sthâvara vyatrikta, other than immovable , द्रव्य dravya, of effects , विनियोगे viniyoge, in the disposal , स्वातन्त्र्यम् svâtantrayam, independence , इति iti, so, this , स्थितम् sthitam, a settled point , स्थावरे sthâvare, in regard to the immovable estate , तु tu, but , स्वार्जिते svârjite, acquired by himself , पित्रादि प्राप्ते pitrâdi-prâpte inherited from his father , etc च cha, and पुत्रादि putrâdi, of his sons and the rest , पारतन्त्र्यम् pârtantryam, control, dependence on (his sons etc), एव eva, indeed , स्थावरम् sthâvaram, immovables , द्विपदम् dvipadam, bipeds , च cha, and , एव eva, indeed , यद्यपि, yad-api, though , स्वयम् svayam, by himself ; अर्जितम् arjitam, acquired , असंभूय asambhûya, without convening सुतान् sutan, sons सर्वान् sarvân, all , न na, neither , दानम् dânam, a gift , न च na cha nor , विक्रयः vikrayah a sale , ये yo, who , जाताः jâtâh, are born , ये yo, who , अपि api, again , अजाताः ये yo, who , च cha, again , गर्भे garbhe, in the womb व्यवस्थिताः vyasthitâh, are resting, settled fixed, lying , वृत्तिम् vrittim, means of support , च cha, and , ते te, they ; अभिकांक्षन्ति abhikanksanti, require , न na, no , दानम् dânam, gift , न च na cha, nor विक्रयः vikrayah, any sale (should be made) , इत्यादि ityâdi, such and such स्मरणात् smaranât, since has been ordained

27. Therefore it is a settled point, that property in the paternal or ancestral estate is by birth, (although) the father

have independent power in the disposal of effects other than immovables, for indispensable acts of duty and for purposes prescribed by texts of law, as gifts through affection, support of the family, relief from distress, and so forth but he is subject to the control of his sons and the rest, in regard to the immovable estate, whether acquired by himself or inherited from his father or other predecessor, since it is ordained "Though immovables or bipeds have been acquired by a man himself, gift or sale of them should not be made without convening all the sons. They, who are born, and they who are yet unbegotten, and they who are still in the womb, require the means of support, no gift or sale should, therefore, be made."

Bâlambhatta' glose

27 He then makes a particular conclusion, 'therefore', it is connected with 'settled' (sthitam); 'although' is understood 'Of the father' is connected with 'independence', he cites the necessary smriti passages 'For indispensable acts" he assigns reason in the existence of necessity, 'as prescribed by texts of law' means in the funeral ceremonies it is a part of the succeeding passage 'Immoveable property', he is independent in disposing of the other kind of property

Having said elsewhere about immoveable property, he now expresses the established truth 'immoveable property', 'but' is in contrast 'control' (dependence) of the father, he says that even on reading its meaning as a whole in conformity with reason, the text is an exception 'Immoveable property', bipeds' slaves etc, 'self even by self, earned, 'although his' is understood 'Without convening', without asking, 'the son' includes daughter 'therefore all' is an ekeṣa (dvanda) compound as explained previously. Not only these but others also, 'those who are born' 'unborn' those who will be born 'require', 'because', 'therefore' are understood.

Mitâkṣrâ

अस्यापवाद । एकोपि स्थावरे कुर्याद्दानाधमनविक्रयम् । आपत्काले कुटुम्बार्थे धर्मार्थे च विशेषत इति । २८ ॥

अस्य asya, to this अपवाद् apavâdah, an exception, एक ekah, a single, अपि api, even स्थावरे sthâvare, of an immovable property, कुर्यात् kuryât, should conclude, दान dâna donation, अधमन adhamana a mortgage विक्रयम् vikrayam or sale आपत्काले âpatkale, during a season

of distress, कुटुम्बार्थे kutumbârthe, for the sake of the family, धर्मार्थे dharmârthe, for pious purposes, विशेषतः visesatah, especially, इति iti, so

28. An exception to it follows "Even a single individual may conclude a donation, mortgage, or sale of immovable property, during a season of distress, for the sake of the family, and especially for pious purposes"

Bâlambhatta's gloss

28 'Its' means the exception by the special text to the above said general rule in the immovable property, it is in the locative case in the sense of subject, 'mortage' means hypothecation It is a compound called 'dwanda by collection' He gives a special reason 'distress', he says In order to a accomplish the object only

Mitâksarâ

अस्यार्थः । अप्राप्तव्यवहारेषु पुत्रेषु पौत्रेषु वा अनुज्ञादानाद्यसमर्थेषु भ्रातृषु वा तथाविधेष्वविभक्तेष्वपि सकलकुटुम्बव्यापिन्यामापदि तत्पोषणे वावश्यकर्तव्येषु पितृश्राद्धादिषु स्थावरस्य दानाधमनविक्रयमेकोपि समर्थः कुर्यादिति । २८ ॥

अस्य asya, of this, अर्थः arthah, the meaning, अप्राप्तव्यवहारेषु aprâpta vyavahâresu, minor such as are not capable of dealing in business पुत्रेषु putresu, if the sons are पौत्रेषु pautresu, or the grandsons are (so), वा vâ, or, अनुज्ञा दानादौ anujnâ dânâdau, of giving consent असमर्थेषु asamarthesu, incapable of, भ्रातृषु bhrâtrsu, if the brothers be, वा vâ, or, तथाविधेषु tathâvidhesu, being so अविभक्तेषु avibhaktesu, continue unseparated, अपि api, even, though, सकल कुटुम्ब व्यापिन्याम् sakal-kutumba vyâpinyâm, affecting the whole family, आपदि âpadi in a calamity, तत्पोषणे tat posane, in supporting it, वा vâ, or, अवश्यकर्तव्येषु avasyam kartavyesu, in the matter of indispensable duties पितृ श्राद्धादिषु pitri srâddâdisu, such as the obsequies of the father or the like स्थावरस्य sthâvarasya, of the immovable property, दान dana, gift, आधमन adhamana, hypothecation, विक्रयम् vikrayam, or sale एक ekah single, अपि api though, समर्थः samarthah, who is capable, कुर्यात् kuryât, may conclude, इति iti, such is the meaning

29 The meaning of that text is this: while the sons and grandsons are minors, and incapable or giving their consent to a

gift and the like, or while brothers are so, and continue unseparated, even one person, who is capable, may conclude a gift, hypothecation, or sale of immovable property, if a calamity affecting the whole family require it, or the support of the family render it necessary, or indispensable duties, such as the obsequies of the family render it necessary, or indispensable duties, such as the obsequies of the father or the like make it unavoidable.

Bâlambhatta's gloss.

20 Its meaning, 'in giving their consent' shows the manner of what is to be said on their being capable and is not in conflict, further it shows the consultation of both: by 'api' (also) is meant the reunited; 'especially' is understood everywhere, even then he mentions it specially; 'whole', 'it' ('at) means the entire family, he gives the result by the locative case in the sense of subject. 'Of the immoveable property'; 'may conclude', therefore though unity is obtained, he reiterates the unity of purpose: 'capable.'

Mitâkṣrâ.

यत्तु वचनम् । अविभक्ता विभक्ता वा सपिण्डाः स्थावरे समाः । एको ह्यनीशः सर्वत्र दानाधमनविक्रये इति तदप्यविभक्तेषु द्रव्यस्य मध्यस्थत्वादेकस्यानीश्वरत्वात् सर्वाभ्यनुज्ञावश्यं कार्या । विभक्तेषूत्तरकालं विभक्ताविभक्तसंशयव्युदासेन व्यवहारसौकर्याय सर्वाभ्यनुज्ञा न पुनरेकस्यानीश्वरत्वे नातोऽविभक्तानुमतिव्यतिरेकेणापि व्यवहारः सिद्ध्यत्येवेति व्याख्येयम् ॥ ३० ॥

यत् तु yat tu, but that; वचनम् vachanam, the text, passage; अविभक्ताः avibhaktâḥ, not seperated, विभक्ताः vibhaktâḥ, seperated; वा vâ, or; सपिण्डाः sapindâḥ, kinsmen, स्थावरे sthâvare, in respect of immovables; समाः samâḥ, equal, एकः ekaḥ, one, हि hi, for; अनीशः anîśaḥ, powerless, having no right, सर्वत्र sarvatra, over the whole, दान dâna, to make a gift आधमन adhamana, to mortgage, विक्रये vikraye, and to sell, इति iti, so, this; तद् tad, that; अपि api, also, अविभक्तेषु avibhakteṣu, among unseparated; द्रव्यस्य dravyasya, of the estate, मध्यस्थत्वात् madhya sthatvâd, because of the common nature of, एकस्य ekasya, of one single person; अनीश्वरत्वात् anîśvaratvâd, because of the powerlessness, सर्वाभ्यनुज्ञा sarvâbhyanujñâ, the consent of all, अवश्यम् avaśyam, surely, कार्या kâryâ, should or must be taken, विभक्तेषु vibhakteṣu, among seperated ones; उत्तरकालम् uttarakâlam, in future time, विभक्त vibhakta whether seperate; अविभक्त avibhakta, or unseperate, or united, संशय saṃśaya, the doubt, व्युदासेन vyudâsena,

by obviating, व्यवहार vyavahâra, the transaction, सौकर्याय saukaryâya, to facilitate, सर्वाभ्यनुज्ञा sarvâbhyanujñyâ the consent of all न na, not, पुन punah, again, एकस्य ekasva, in a single person, अनीश्वरत्वे anisvartve, on account of any want of suffi ient power न na n)t withint अत atah, consequently विभक्त vibhakta, of se; erate kins nen, अनुमति anumati, consent, व्यतिकरेण vyatikârena, mixing u, taking up, अपि api even, व्यवहार vyahârah, tra saction, सिद्ध्यति si ldhyati, becomes valid एव eva, indeed, इति iti, so, thus, व्याख्येयम् vyâkhyeyam, must be interpreted

30 The following p ssage, "Separated kinsmen, as those who are unseparated, are equal in respect of immovables, for one has not power over the whole, to make a g f, sale, or mortgage", must be thus interpreted "among unseparated kinsmen, the consent of all is ind spensably requisite because no one is fully empowered to make an alienation, since the es ate is in common" but, among separated kindred, the consent of all tends to the facility of the transaction, by obviating any future doubt, whether they be separate or united, it is not required, on account of any want of sufficient power, in the single owner, and the transaction is consequently valid even without the consent of separated kinsmen

Bâlambhatta's gloss

30 He reconciles the contradiction which arises from the texts with Manu's text with the above said object As to the text of Manu, 'kinsmen' (sapinda) implies 'propinquity' 'for', means because, 'over the whole', qualifies the donations etc 'Although' is connected with 'must be thus interpreted', 'also' means thus the above said collection of texts of Vishnu, he therefore, exp lains it in an inverted order By reason of being in the middle 'means by being common by reason of being not capable', to both *ka'* is ad led = the sense of one s object in their stead there are अप्रयत्नवात् and अनीश्वरत्व व the different readings 'All', means that without the consent of the co sharers (who are not separate) there can not be donation etc 'For the facility of the transaction' means 'of the donee etc, 'not again' on the contrary not he then sums up, 'consequently' So that is a subject of the consent of those who are not competent, this is the subject of the consent of those who are competent. So there can not be donation etc and without the consent of those coshareres who are competent it means that they depend upon it (consent) On the other hand, though the gift is proper without the consent of the separated ones who are competent, yet for the facility of the transactions for the donee etc, they depend upon it (consent) it is its subject it does not prohibit the gift etc in all cases (The text) 'even a single' is an excep

tion to it so there is a contradiction But Madana (Madan Pârijâta) says "it prohibits the donation etc of the standing crops grown in the undivided fields of even those who are divided in a portion of the property, without the consent"

Mitâksarâ

यदपि । स्वग्रामज्ञातिसामन्तदायादानुमतेन च । हिरण्योदकदानेन षड्भिर्गच्छति मेदिनीति । तत्रापि ग्रामानुमतिः प्रतिग्रहः प्रकाशः स्यात्स्थावरस्य विशेषतः इति स्मरणात् व्यवहारप्रकाशनार्थमेवापेक्ष्यते न पुनर्ग्रामानुमत्या विना व्यवहारासिद्धिः । सामन्तानुमतिस्तु सीमाप्रतिपत्तिनिरासाय । ज्ञातिदायादानुमतेस्तु प्रयोजनमुक्तमेव ॥ ३१ ॥

यद् yad, that (passage), अपि api, again, also, स्वग्राम sva grâma, of his townsmen, ज्ञाति jñâti, kinsmen, सामन्त sâmanta, neighbours, दायाद dâyâda, heirs, अनुमतेन anumatena, by the consent, च cha, and, हिरण्य hiranya, of gold उदक udaka, and water, दानेन dânena, by a gift, षड्भि sadbhih, by six (formalities), गच्छति gachchhati, passes, मेदिनी medinî, land, इति iti, so, तत्र tatra, in that, अपि api, also, ग्रामानुमति grama, anumatih, the consent of the townsmen, प्रतिग्रहः pratigrahah, acceptance, प्रकाश prakâsah, public, known to the people, स्यात् syat, should be, स्थावरस्य sthâvarasya, that of an immovable property; विशेषतः viśeṣatah, especially, इति iti, such, this, स्मरणात् smaranât, since it has been provided; व्यवहार vyavahâra, of the transaction, प्रकाशनार्थम् prakâśanârtham, for the sake of the publicity of, एव eva, only, अपेक्ष्यते apekṣyate, is required; न na, not, पुन punah, and ग्रामानुमत्या grama anumatya, the consent of the townsmen, विना vinâ, without, व्यवहार vyavahâra, of the transaction, असिद्धि asiddhih, the invalidity सामन्तानुमति Sâmanta anumatih, the consent of the neighbours, तु tu, but, सीमा sîmâ, about the boundary, प्रतिपत्ति pratipatti, dispute, doubt, निरासाय nirâsâya, to remove, ज्ञाति jñâti, of the kinsmen, दायाद dayada, of the kinsmen, अनुमते anumateh, of the consent of, तु tu, but; प्रयोजनम् prayojanam, the purpose, the use, उक्तम् uktam, is mentioned, एव eva, already

31 In the texts, which expresses, that "Land passes by six formalities, by consent of townsmen, of kinsmen, of neighbours, and of heirs and by gift of gold and of water, consent of townsmen is required for the publicity of the transaction, since it is provided; that "Acceptance of a gift, especially of land, should be public" but the contract is not invalid without their consent. The approbation of neighbours serves to obviate any dispute con-

cerning the boundary. The use of the consent of kinsmen and of heirs has been explained.

Bâlambhatta's gloss

31 He now reconciles the contradiction with the text of Manu, 'in that text', own' (eva) is an adjective of all for a clear meaning by reason of obtaining proximity On account of hearing it at the end of the dwanda compound, the 'consent should be repeated everywhere, the affix '*kta*' is added in the sense of 'existence' and should be connected with the following ... with the six Having explained it and shown the applicability in order, the gives the result following the consent of townsmen at first 'there the consent of the townsmen', he cites Manu, 'acceptance of gift, 'not again' means 'but not', 'consent of kinsman', the singular is in the sense of a class 'has been explained' means with the object of the facility of the transaction

Mitâksarâ

हिरण्योदकदानेनेति । स्थावरे विक्रयो नास्ति कुर्यादाधिमनुज्ञयेति स्थावरस्य विक्रयप्रतिषेधात् । भूमिं यः प्रतिगृह्णाति यश्च भूमिं प्रयच्छति । उभौ तौ पुण्यकर्माणौ नियतौ स्वर्गगामिनाविति दानप्रशंसादर्शनाच्च । विक्रयेऽपि कर्तव्ये सहिरण्यमुदकं दत्त्वा दानरूपेण स्थावरविक्रयं कुर्यादित्यर्थः ॥ ३२ ॥

हिरण्य hiranya, of gold, उदक udaka, and of water, दानेन dânena by the gift, इति iti, this provision, स्थावरे sthâvare, as regards an immovable property, विक्रयः vikrayah, sale, न na, not, अस्ति asti, there is, कुर्यात् kuryâd, may execute; आधिम् âdhim, a mortgage, अनुज्ञया anujnayâ, by the consent, इति iti, by this statement; विक्रयप्रतिषेधात् vikraya pratisedhât, because of the prohibition to the sale, भूमिम् bhumim, land, यः yah, he who, प्रतिगृह्णाति prati grihnâti, accepts च yah, he who, च cha, and, भूमिम् bhumim, land, प्रयच्छति prayachchhati gives; उभौ ubhau, both, तौ tau, those, पुण्यकर्माणौ punyakarmanau, performers of a holy deed, नियतौ niyatau, are sure, are destined, स्वर्गगामिनौ svarga gâminau, to go to heaven, the region of bliss, इति iti, thus, दान dâna, or gift, प्रशंसा prasansâ, the praise, दर्शनात् darśanât, since it is seen, च cha, and, विक्रये vikraye, if a sale, कर्तव्ये kartavye, must be made, सहिरण्यम् sahiranyam, with gold; उदकम् udakam, water दत्त्वा datva, by giving दानरूपेण dânarupena, in the form of a gift, स्थावर sthavara, of an immovable property, विक्रयम् vikrayam, the sale, कुर्यात् kuryat, should do, इति iti, thus, अर्थः arthah, the meaning

32. (By gift of gold and of water) Since the sale of immovables is forbidden ("In regard to the immovable estate, sale is not allowed," it may be mortgaged by consent of parties interested, and since donation is praised ("Both he who accepts land, and he who gives it, are performers of a holy deed, and shall go to a region of bliss") if a sale must be made, it should be conducted, for the transfer of immovable property, in the form of a gift, delivering with it gold and water (to ratify the donation).

Bālambhatta's gloss.

32. In order to explain the extraordinary use of gold and water he says with an authority; 'gold'; in a case of a gift, their being essential (to validate) the gift, is it improper in the case of a sale by reason of the necessity of the transfer also there, on account of their absence? Therefore he says, both these have, like Manu, authority, as before; by 'api' gift is meant.

Mitākṣrā.

पैतृके पैतामहे च धने जन्मनैव स्वत्वेऽपि विशेषं भूयो पितामहोपात्तेत्यत्र वक्ष्यामः । ३३ ॥

पैतृके paitrike, to the paternal; पैतामहे paitāmahe, the ancestral; cha, and, धने dhane, estate, जन्मना janmanā, by birth; एव eva, only, surely; स्वत्वे svatve, though the proprietary right is; अपि api, though; विशेषम् viśeṣam, the distinction; भूः bhuh, land; या yā, that, पितामहोपात्त pitāmaha upātta, what is acquired by the grandfather; इति iti, that; अत्र atra, here; वक्ष्यामः vakṣyāmah, we shall explain:

33. In respect of the right by birth, to the estate paternal or ancestral, we shall mention a distinction under a subsequent text.

Bālambhatta's gloss

Having said generally as regards immoveable property he now says in particular with reference to both. 'Paternal' by this, the death of the father is the cause of the proprietary right ["on the death of the father, let the sons divide the father's property" Narada chap XIII-2)] but not birth ['after the father and mother' (Manu IX-104)]

"On the death of the father let the sons divide the father's wealth; when the faultless father is alive, they have no ownership." It is in conflict with Devala. It shows dependence like 'wife and son...... ....' (M. VIII-41 Gharpure's edition). Then there is no proof of proprietary right, in wife and others from 'whatever they earn' (Manu VIII 417) the proprietary right being proved, it is improper to say that it relates

to their dependence, because of the conflict with the text of the Veda by reason of the failure of the Vedic rite to be performed with their own wealth on their having no proprietary right in their own earning This being so, there can be a partition even against the will of the father There being no authority in favour of the proprietary right by birth and the smriti having not ordained earning from birth, therefore it is with a view to prohibit partition while the father is alive, the text of Manu does not lay down independence of proprietary right, but (shows) that there is no ownership while the parents are alive The above said (proposition) that the ownership arises on death, degradation etc is refuted for the above reasons

END OF PREFACE



SECTION II. 1.

Mitākṣrā.

इदानींयत्रकाले येन च यथा विभागः कर्तव्यस्तद्दर्शयन्नाह

विभागं चेत्पिता कुर्यादिच्छया विभजेत्सुतान् ।
ज्येष्ठम् वा श्रेष्ठभागेन सर्वे वा स्युः समांशिनः ॥ ११४ ॥

इदानीम् idânim, next, now; यत्र yatra, at what; काले kâle, time; येन yena, by whom, च cha, and; यथा yathâ how, विभागः vibhâgah, partition; कर्तव्यः kartavyaḥ, may be made; तद् tad, that, those points; दर्शयन् darśayan, explaining. आह âha, the author says; विभागम् vibhâgam, partition; चेत् chet, if; पिता pitâ, the father; कुर्यात् kuryât, may make; इच्छया ichchhayâ, at his pleasure; विभजेत् vibhajet, may separate; सुतान् sutân, sons; ज्येष्ठम् jyeshtham, the eldest; वा vâ, either; श्रेष्ठभागेन śrestha-bhâgena, by the best share, सर्वे sarve, all; वा vâ, or, स्युः syuḥ, may be; समांशिनः samâmśinaḥ, equal sharers.

2. . At what time. by whom, and how, partiton may be made, will be next considered. Explaining those points, the author says, "when the father makes a partition, let him separate his sons (from himself) at his pleasure, and either (dismiss) the eldest with the best share, or (if he choose) all may be equal sharers."

Bâlambhatta's gloss.

Formerly by 'at what time' etc. (see pl 6 of sec 1) the subjects having been set forth there, by 'whom' has been discussed at great length; now he comments on the orignal text to describe the other shares. 'Now' means after having filled up the uncited original text which is essentially important in the original, 'these' means the third.

Mitākṣrā.

यदा विभागं पिता चिकीर्षति तदा इच्छया विभजेत् पुत्रानात्मनः सकाशात् पृथं पुत्रौ पुत्रान् ॥ २ ॥

यदा yadâ, when, विभागम् vibhâgam partition पिता pitâ father, चिकीर्षति chikirṣati, wishes to make, तदा tadâ, then, इच्छया ichchhayâ at pleasure, विभजेत् vibhajet, should separate पुत्रान् putrân, sons, आत्मन âtmanah, himself, सकाशात् sakâśât, from (himself), पुत्रम् putram, a son, पुत्रौ putrau, two sons, पुत्रान् putrân, sons

2. When a father wishes to make a partition he may at his pleasure separate his children from himself, whether one, two, or more sons.

Bâlambhatta's gloss

2 He now proceeds avoiding the fault of repetition 'when' means 'if', 'may make', here imperative is not wanted, it is in the secondary sense of 'wishes to make' 'Then', 'with pleasure' means 'at his pleasure', 'separate' means 'may separate them by allotting them their shares in the inheritance' He says further in order to accom lish his whish, 'from himself' means that after separation there is indifference on his part whether they continue to live joint or separate from one another When he says 'sons', it is with a view to remove the doubt to the effect that there is no partition when there are many coshareors 'Son', it is with a view to explain the ekaśeṣa dwanda samâsa, it is like anudâttânâm (of the low accents),

Mitâksarâ

इच्छाया निरङ्कुशत्वादनियमप्राप्तौ नियमार्थमाह । ज्येष्ठं वा श्रेष्ठभागेनेति । ज्येष्ठं श्रेष्ठभागेन मध्यमं मध्यमागेन कनिष्ठं कनिष्ठं कनिष्ठभागेन विभजेदित्यनुवर्तते ॥ २ ॥

इच्छायाः ichchhâyâḥ, of the will, निरङ्कुशत्वात् niraṅkuśatvât, as it has no restriction, अनियम aniyama, no rule, प्राप्तौ prâptau being had, seen, नियमार्थम् niyamârtham by way of restriction आह âho, says (the author), ज्येष्ठम् jyeṣtham, the oldest, वा vâ or श्रेष्ठभागेन śreṣtha bhâgena by the best share, इति iti, the words mean, ज्येष्ठम् jyeṣtham, the oldest, श्रेष्ठभागेन śreṣtha bhâgena, by the best share, मध्यमम् madhyamam the middle one, मध्यमागेन madya bhâgena, with a middle share, कनिष्ठम् kaniṣtham, the worst, कनिष्ठ-भागेन kaniṣtha bhâgena, by the worst share, विभजेत् vibhajet, should separate, इति iti, this, अनुवर्तते anuvartate is understood.

॥ No rule being suggested (for the will is unrestrained), the author adds, by way of restriction, 'he may separate (for this term is again understood) the eldest with the best share," the middlemost

with a middle share, and the youngest with the worst share

Bâlambhatta's gloss

3 Unrestrained, means 'by reason of being irregular', 'by way of restriction' as a restrictive rule. He makes the observation to be in conformity with the text of Manu, the 'middlemost', he says out of desirability, 'may separate', it is to suggest respect in the observation (upalaksana)*

Mitâksarâ

श्रेष्ठादिविभागश्च मनुनोक्तः। (अ० ९ श्लो० ११२) ज्येष्ठस्य विंशउद्धारः सर्वद्रव्याच्च यद्वरम्। ततोऽर्धं मध्यमस्य स्यात्तुरीयं तु यवीयस इति ॥४॥

श्रेष्ठादि Śreṣṭhâdi, of the best etc, विभाग vibhâgah, the distribution; च cha, and; मनुना manunâ, by Manu, उक्त uktah, as said, propounded, ज्येष्ठस्य jyeṣthasya, for the eldest, विंश vinsáh, the twentieth part, उद्धार uddhârah, to be deducted, सर्व-द्रव्यात् sarva dravyât, of all the wealth, (heritage) च cha, and, together with, यद् yad, whatever, वरम् varam, is the best, ततः tatah, of that, अर्धम् ardham, half, मध्यमस्य madhyamasya, of the middle one, स्यात् syât, should be, तुरीयम् turíyam, a quarter, तु tu, but, यवीयसः yavíyasah, for the youngest, इति iti, thus it is to be understood

4. This distribution of best and and other portions is propounded by Manu. "The portion deducted for the eldest is the twentieth part of the heritage, with the best of all the chattels; for the middlemost, half of that for the youngest, a quarter of it."

Bâlambhatta's gloss

4 'Best and others' 'and' (cha) in the sense of 'but', its explanation will be clear gradually in the book itself.

Mitâksarâ

वाशब्दो वक्ष्यमाणपक्षापेक्षः। सर्वे वा स्युः समांशिन इति। सर्वे वा ज्येष्ठादयः समांशभाजः कर्तव्या ॥५॥

वाशब्द vâ sabdah, the word either, or, वक्ष्यमाण vakṣyamâna, what will be spoken subsequently, पक्ष pakṣa, alternative, अपेक्षा apekṣâ, relative

* It is an implication of something that is not expressed

to, सर्वे sarve, all वा vâ or, स्युः syuh, should be, समांशिनः samâmśinah, equal sharers, इति iti, that is, सर्वे sarve, all, वा vâ or, ज्येष्ठादय jyeṣthâdayaḥ, the eldest and others, समांशभाज samâmśabhâjah, partakers of equal portions, कर्त्तव्या kartavyâh, should be made

5. The term ' "either ' is relative to the subsequent alternative "or all may equal sharers" That is, all, namely, the eldest and the rest, should be made partakers of equal portions

Bâlambhatta's gloss

5 'The word 'or' in 'or all' of the succeeding part of the verse (4th quatrain), when read with the rule laid down in the first part being useless, is the word 'either' (or) in 'either the eldest' not useless as it is appropriate to denote the first option? Not so, by reason of sanctioning the unequal division at choice by the first clause because the unequal division is contradictory to the original texts as will be shown later on Therefore he says, 'the term either' denotes that it is correlative with the unequal distribution of Manu, less the additional share allotted to be gradually explained, so there is no impropriety in the reality thereof

He explains the fourth quartrain ' or all', in 'equal sharers' the affix ' in' is added in the sense of praise by bahubrihi compound, it means 'no deprivation of wealth' 'Partakers of equal portions,' he says, as said previously, 'should be made' by the father is understood Here by 'when makes a partition' the time of partition is meant, by 'father' is meant by whom partition (is to be made) From the succeeding line of the verse, it should be understood how partition (is to be effected)

Mitâksarâ

अयं च विषमो विभागः स्वार्जितद्रव्यविषयः । पितृक्रमायाते तु समस्वाम्यस्य वक्ष्यमाणत्वान्नेच्छया विषमो विभागो युक्तः ॥ ६ ॥

अयम् ayam, this च cha, and, विषम visamah, unequal, विभाग vibhâgah, distribution, स्वार्जित द्रव्य विषयः svârjita dravya viṣayah, has for its subject the property acquired by himself, पितृ क्रमायाते pitṛi kramaâyâte, as regards what has descended from the father, तु tu, but, सम-स्वाम्यस्य sama svâmyasya, equal ownership, वक्ष्यमाणत्वात् vakṣyamânatvât, for it will be declared, न na, not, इच्छया ichchhayâ, at his pleasure, विषमः viṣamaḥ, an unequal, विभागः vibhâgah, distribution, युक्तः yuktah, proper.

6. This unequal distribution supposes property by himself acquired, But, if the wealth descended to him from his father, an

unequal partition at his pleasure is not proper; for equal ownership will be declared

Bâlambhatta' glose

6 He now gives the special (feature) 'this' i e the partition made by the father, 'but if descended to him from his father', means property', 'equal ownership' means that it is to be divided equally otherwise by the above-said mode, there will be meaninglessness

Mitâksarâ

विभागं चेत्पिता कुर्यादिति यदा पितुर्विभागेच्छा स तावदेकः कालः। अपरोऽपि जीवत्यपि पितरि द्रव्यनिःस्पृहे निवृत्तरमणे मातरि च निवृत्तरजस्कायां पितुरनिच्छायामपि पुत्रेच्छया विभागो भवति। यथोक्तं नारदेन। अत ऊर्ध्वं पितुः पुत्रा विभजेयुर्धनं सममिति। पित्रोरूर्ध्वं विभागं प्रतिपाद्य मातुर्निवृत्ते रजसि प्रत्तासु भगिनीषु च। निवृत्ते वापि रमणे पितर्युपरतस्पृह इति दर्शितः। अत्र पुत्रा धनं समं विभजेयुरित्यनुषज्यते। गौतमेनापि। ऊर्ध्वं पितुः पुत्रा रिक्थं विभजेरन्नित्युक्त्वा निवृत्ते वापि रजसीति द्वतीयः कालो दर्शितः। जीवति चेच्छतीति तृतीय कालो दर्शितः। तथा सरजस्कायामपि मातर्यनिच्छत्यपि पितर्यधर्मवर्तिनि दीर्घरोगग्रस्ते च पुत्राणामिच्छया भवति विभागः। यथाह शङ्खः॥ अकामे पितरि रिक्थविभागो वृद्धे विपरीतचेतसि रोगिणि चेति॥ ७॥

विभागम् vibhâgam, distribution, partition, separation, चेत् chet, if, पिता pitâ, father, कुर्यात् kuryât, would do, इति iti, according to this, यदा yadâ if, when, पितुः pituḥ, the father's, विभागेच्छा vibhâgechchhâ, the desire for partition, स sah, that, तावद् tâvad, then, एक ekah, one; कालः kâlah, period, अपरः aparah, another, अपि api, too, जीवति jivati, be living, अपि api, even though, पितरि pitari, the father, द्रव्य-निःस्पृहे dravya nisprihe, indifferent to wealth, निवृत्त रमणे nivritta ramane, disinclined to pleasure, मातरि mâtari, the mother, च cha and, निवृत्त रजस्कायाम् nivritta rajaskayân being such as incapable of bearing more sons पितुः pituh, of the father, अनिच्छायाम् anichchhâyâm, if there be no wish (of the father), अपि api, even, पुत्रेच्छया putra ichchhayâ, by the wish of the sons, यथा yathâ, as, उक्तम् uktam, is said, नारदेन Narada, by Nârada, अतःऊर्ध्वं atah ûrdhvam, after this : पितुः pituḥ, father's (wealth), पुत्राः putrâh, the sons, विभजेयुः vibhajeyuh may divide; धनम् dhanam, wealth; समम् samam, equally, इति iti, with these words, पित्रोः pitroh, both the parents, ऊर्ध्वम् ûrdhvam, after, विभागम् vibhâgam, partition, प्रतिपाद्य pratipâdya, having mentioned, promised, मातुः mâtuh, of the mother निवृत्ते nivritte, being stopped for ever, रजसि rajasi, the menstrual

are extinguished." Here the words "Let sons equally divide the wealth" are understood. Gautama likewise, having said, "After the demise of the father, let sons share his estate;" states a second period, "Or when the mother is past child-bearing", and a third, "While the father lives, if he desire separation." So, while the mother is capable of bearing more issue, a partition is allowable at the choice of the sons, though the father be unwilling, if he be addicted to vice or afflicted with a lasting disease. Thus Sankha declares: "Partition of inheritance takes place without the father's wish, if he be old, disturbed in intellect or diseased."

Bâlambhaṭṭa's gloss.

7. 'By desire', (means) 'of the father'; although this equal division relates to the self-acquired property, yet being maintained subsequently and the additional share being not specially described it must be *understood as not maintained. Therefore 'let him separate'* being appropriate is first, the second is included in it and the other two are common. There are four periods of partition; the first is supported by the original text; he says with authority 'If partition'; 'when' means 'during his life time' The second *is not mentioned, so he himself* supplies it; 'another also', the period is understood. He explains it 'while ... alive;' 'disinclined,' 'not desirous of sexual pleasures,' 'of the father' in the partition is understood. 'Against the father's wish' when there is a desire on the son's part, because in the *original*, there is no authority, he cites it: 'as by Nârada' is connected with, 'shown.' 'After...' of the parents', is understood, 'hence'; here it is connected with the wealth of the father; 'hence subsequently' means after the death of both the parents "*Let brothers convening after the death of the father* and mother divide the paternal estate, because they are not independent during their life time.' (Manu IX 104) It is according to Manu; so he says, 'of both parents'; 'prattasu' means on being married; there is also 'or as a different reading; 'sexual pleasures' means sexual enjoyment, i. e. when that desire has come to an end. Spriha (desire) relates to wealth; here he gives the result of what is said. 'Here' means when the mother is past childbearing, by this, desirability (of suitable words) is removed. He explains the original Nârada and his own with reference to the said text of Nârada repeating the 1st. 2nd. and 3rd. periods in an inverted order with the quotations from other sages 'Gautama likewise', 'third' is connected with 'shown' with repetition. 'After the demise' of the parents is understood; of the father like the preceding 'or also' in the alternative case, similarly, it should be understood in Nârada's text i. e. 'or desires' Third'; the period has been shown by Gautama. In the course of the present discussion, it should be considered first, in this way be has stated both the views (periods.)

He then gives the third per od 'so', but the different reading 'nir' (without) has been explained with this ends the quotation from Gautama Having himself given two periods, he gives the third period, 'while the father lives if he desires, and a third' he means, that the third period is one when the father wishes during his life time and is also addicted to sensual pleasures He explains it 'while the mother is capable of bearing more issue' in reality it is first in reading, it is already explained and it should be understood that it requires a cursory explanation 'Though the father be unwilling' to the partition etc, lasting incurable 'and' (cha), indicates 'old age' 'When there is a desire of the son' is understood; he therefore explains it by reason of its not being mentioned in the original text 'Thus Sankha declares', 'without the wish not wishing the separation, 'disturbed in intellect' means being addicted to unrighteousness, in 'rogini' the affix 'in' is added in the sense of excess, 'or' is to indicate option Similarly it should be understood in the preceding (part) also, by this, there are two periods only (1) at the option of the father and (2) when he dies there is no third period The period when the mother is past child bearing applies to the ancestral property This clashes with the preceding by reason of the contradiction with Sankha, because there is no authority in support of that alone and there is possibility of truth in its real nature and conflict with the previous So the third period should be accepted as regards the ancestral property By this the above said contrary explanation is refuted

Mitâksrâ

पितुरिच्छया विभागोद्विधा दर्शित समोविषमश्च तत्र समविभागे विशेषमाह ।

यदि कुर्यात्समानंशान् पत्न्यः कार्याः समांशिकाः ।
न दत्तं स्त्रीधनं यासां भर्त्रा वा श्वसुरेण वा । ११५ ॥

पितुः pituḥ, by the father's, इच्छया ichchhayâ, by the desire or, will; विभागः vibhâgaḥ, partition द्विधा dvidhâ, of two sorts, दर्शित darśitaḥ, has been stated, समः samaḥ equal, विषमः vishamaḥ, unequal, च cha, and, तत्र tatra, there, समविभागे sama vibhâge, in the case of equal partition, विशेषम् viśeṣam a special rule आह âha, adds says यदि yadi, if, कुर्यात् kuryât he make समान् samân equal अंशान् amśân, parts, allotments, पत्न्यः patnyaḥ, wives कार्याः kâryâḥ, should be made, rendered समांशिकाः samâmśikâḥ, partakers of like portions न na, not, दत्तम् dattam, given, स्त्रीधनम् stridhanam, the separate property of the wife, यासाम् yasâm, whom, भर्त्रा bhartrâ, by the husband, वा vâ, either, श्वसुरेण śvaśurena, by the father in law, वा va or

8. Two sorts of partition at the pleasure of the father have

been stated, namely, equal and unequal. The author adds a special rule in the case of equal partition.

"If he make the allotments equal, his wives, to whom no separate property has been given by the husband or the father-in-law, must be rendered partakers of like portions.".

Bâlambhatta's gloss.

8. 'Partition,' the first one, 'stated' by the orignal writer; he describes it in a reverse order suggesting that the equal partition is the established truth and is sanctioned in the original; 'equal'; 'there' (*tatra*), between the two.

Mitâkṣra.

यदा स्वेच्छया पिता सर्वानेव सुतान् समविभागिनः करोति तदा पत्न्यश्च पुत्रसमांशभाजः कर्तव्या । यासां पत्नीनां भर्त्रा श्वशुरेण वा स्त्रीधनं न दत्तम् । दत्ते तु स्त्रीधने अर्धांशं वक्ष्यति दत्ते त्वर्धं प्रकल्पयेदिति । ९ ॥

यदा yadâ when; स्वेच्छया svechchhayâ, by his own choice; पिता pitâ, father, सर्वान् sarvân, all; एव eva, indeed; सुतान्, sutân, sons; सम-विभागिनः sama vibhâginah, partakers of equal shares; करोति karoti, makes, तदा tadâ then, पत्न्यः patnyah, wives; च cha, and; पुत्रसमांशभाजः putra-samâmśa-bhâjah, participants of shares equal to those of sons; कर्तव्याः kartavyâh, should be made; यासाम् yâsâm, to which; पत्नीनाम्, patninâm, wives भर्त्रा bhartrâ by the husband, श्वशुरेण svaśureṇa, by the father-in law; वा vâ or; स्त्री-धनम् stridhanam, separate property for a woman; न na, not, दत्तम् dattam, given; दत्ते datte, if it be given; स्त्री-धने stridhane, special property for a woman; अर्धांशम् ardha-amśam, half a share, वक्ष्यति vakṣyati, dictates, directs. दत्ते datte, if anything be given; tu, but, अर्धम् ardham, half, प्रकल्पयेत् prakalpayet, let him assign.

9. When the father, by his own choice, makes all his sons partakers of equal portions, his wives, to whom, peculiar property had not been given by their husband, or by their father-inlaw, must be made partakers of shares equal to those of sons. But, if separate property have been given to a woman, the author subsequently directs half a share to be allotted to her: "or if any had been given, let him assign the half."

ribhajati, distributes ; तदा tadâ, then ; पत्न्यः patnyaḥ, wives ; श्रेष्ठादि भागान् [illegible] [illegible]bhâgân, the superior and similar shares ; न na, not ; लभन्ते labh[illegible], do take, do get ; किंतु kintu, but ; उद्धृतोद्धारात् uddhṛita-uddhârât, from which the son's deductions have been substracted ; समुदायात् samudâyât, from the aggregate ; समान् samân, equal ; एव eva, indeed ; अंशान् amśân, parts, स्वोद्धारम् sva-uddhâram, their own shares (deducted) ; च cha, and, besides ; यथा yathâ, as ; आह âha, says ; आपस्तंबः apastambaḥ, Âpastamba ; परीभाण्डम् paribhândam, the furniture ; च cha, and ; गृहे gṛihe, in the house ; अलङ्कारः alankâraḥ, ornaments ; भार्यायाः bhâryâyâḥ, belong to the wife, become the wife's property.

10. But if, he give the superior allotment to the eldest son, and distribute similar unequal shares to the rest, his wives do not take such portions, but receive equal shares of the aggregate from which the son's deductions have been substracted, besides their own appropriate deductions specified by Apastâmba :" The furniture in the house and her ornaments are the wife's (property.)"

Bâlambhatta's gloss.

10. With this object in view, he says 'if superior', from the allotted additional share; it is *bahubrihi* compound and means 'of the sons.' It must be equal being not sanctioned by the text, so he says rightly 'like equal': 'own', wife. There is, therefore, an authority in the latter case; so he says, 'domestic furniture, chair, intensils made of clay and stone etc, ornaments, worn clothes go to the share of the wife', this is the meaning. According to Haridatta the chariot of the father and the furniture in the house both go to the father, ornaments go to the wife and the gift made by the caste people also go to the wife according to some."

Here by 'if he make', the partition at the option of father but not at the option of the wife is laid down; that is also up to the division of the sons' shares (but) not of their own accord, 'there is no partition between the husband and wife' etc. having been said down by Apstamba and others as said previously, it is impossible by reason of her being said to be one (with her husband) So says the Śruti "the wife is the other half of the self." It also means according to Manu 'they are not free while they are alive', (Manu IX.104) because she becomes subordinate by reason of the son; but when there are more wives than one, on account of the plural number each wife should be allotted an equal share with the son along with his own. It

does not mean that they should be separated by giving them shares they are, therefore, said to be equal partakers here but not to be separated like sons by giving them equal shares The rule laid down by Âpastamba does not apply when there is no partition of the property but what is said has been fully explained previously by the commentator in connection with the subject of 'surety' In Madanaratna there is also the same thing, in this way just as in the first alternative when the partition is effected while the father is alive, so also in the other two alternatives when it is given, it should be understood that legally there must be maintenance at the option of the son just like the father.

CXVI

Mitâksarâ

ज्येष्ठं वा श्रेष्ठभागेन सर्वे वा स्युः समांशिनइति पक्षद्वयेऽप्यपवादमाह

शक्तस्यानीहमानस्याकिञ्चिद्दत्वा पृथक् क्रिया ।

ज्येष्ठम् jyeṣṭham, the eldest, वा vâ either, श्रेष्ठभागेन śreṣṭhabhâgena, by a superior share, सर्वे sarve, all, वा vâ, or, स्युः syuḥ, should be, समांशिनः samâṁśinaḥ, partakers of equal shares; इति iti, in these, पक्षद्वये pakṣadvaye, two alternatives, अपि api, also, अपवादम् apavâdam, an exception, आह âha, says, propounds, शक्तस्य śaktasya, of one who is able to support himself, अनीहमानस्य anîhamânasya, not desirous of participation, किञ्चिद् kiñchid, some thing, a trifle, दत्वा datvâ, by giving, पृथक्-क्रिया pṛthak-kriyâ, making separate

11. To the alternative before stated (§1) the author propounds an exception.

"The separation of one who is able to support himself and is not desirous of participation may be effected by giving him some trifle."

Mitâkṣarâ

स्वयमेव द्रव्यार्जनसमर्थस्य पितृद्रव्यमनीहमानस्यनिच्छतोयत्किञ्चिद्दत्वासारम् पृथक् क्रिया विभाग कार्यः पित्रा । तत्पुत्रादीनां दायजिघृक्षा भाभूदिति । १२ ॥

स्वयम्-एव svayam-eva, himself, द्रव्यार्जनसमर्थस्य dravyârjana samarthasya, to one who is able to earn wealth, पितृ-द्रव्यम् pitṛ dravyam, father's

wealth, goods; अनीहमानस्य anihamânasya, not desirous of; अनिच्छतः anichchhataḥ, not desirous of sharing; यत्किञ्चित् yat-kiñchit, any thing, whatsoever; असारम् asâram, not valuable; अपृथक् aprithak, not separated; क्रिया kriyâ, making, विभागः vibhâgaḥ; partition, separation. कार्यः kâryaḥ, should be made; पित्रा pitrâ, by the father; तत्पुत्रादीनाम् tat putra-âdinâm, on the part of his sons and others; दायजिघृक्षा dâya jighrikṣâ, future claim on heritage; माभूत् mâ bhûd, should not be, इति iti, so

CXVI.

To one who is himself able to earn wealth, and who is not desirous of sharing his father's wealth, anything whatsoever, though not valuable, may be given, and the separation or division may be thus effected by the father, so that the children or other heirs of that son may have no subsequent desire to claim a partition.

Bâlambhatta's glose.

11 and 12. Here is an explanation of 'able' (Y); 'himself' (M) is understood; 'father', it is also explained; 'not desirous,' he says that it is inherent in the word, 'though not valuable,' by 'api' there is conjunction of similar things of the same class *(ejusdem generis)*, he assigns a reason: 'the children of that,' *iti* means for this reason.

Mitâkṣrâ.

ज्येष्ठं वा श्रेष्ठभागेनेति न्यूनाधिकविभागोदर्शितः तत्रच शास्त्रोक्तोद्धारादिविषम-विभागव्यतिरेकेणान्यथाविषमविभागनिषेधार्थमाह

न्यूनाधिकविभक्तानां धर्म्यः पितृकृतः स्मृतः ॥ ११६॥

ज्येष्ठम् jyeṣṭham, the oldest; वा vâ, either; श्रेष्ठभागेन śreṣṭha-bhâgena, by the best share; इति iti, by this; न्यूनाधिकविभागः nyûna-adhika-vibhâgaḥ, the distribution of greater or less shares, दर्शितः darśitaḥ; is shown, तत्र tatra, in such a case; शास्त्रोक्त śastra-ukta, as are l.r- ed by the law;' उद्धारादि uddhârâdi, by means of deductions; विषम-विभाग व्यतिरेकेण viṣama-vibhâga-vyatirekena, than that which renders the distribution uneven;

13 The distribution of greater and less shares has been shown. (SI) To forbid, in such case, an unequal partition made in any other mode than that which renders the distribution uneven by means of deductions, such as are directed by the law, the author adds, "A legal distribution, made by the father among sons separated with greater or less shares, is pronounced valid"

Bâlambhatta's gloss

He explains the relevancy of the subsequent passage, 'either eldest' (Y) 'there' (M) in such a case, there is a compound with the third *vibhakti* in deduction etc (uddhâradi) 'otherwise' If it so be, ... then etc 'Directed by the law' includes that which follows he says because the prohibition is not clear, it means in support of it Otherwise 'when the father makes a partition, let him separate his sons at his pleasure' supports the third alternative (period) and clearly renders the Manu's text as to an equal partition without deduction useless Similarly Vishnu says 'If the father separates his sons, it is at his option in his self acquisition" Brihaspati says 'One should make a donation and partition of his wealth at his option' Nârada says "Let the father while hale and healthy, separate his sons with the best share to the eldest or at his own wish" (XIII 4) The text from Nârada supports the commentator's explanation of the original text From this indicates a partition at the option of each but not a partition with an additional share' supporting the view 'let the father separate the sons at his option', the argument of the unwise (Manda) is refuted by reason of its conflict with Vishnu and Nârada etc and the explanation of Vijnaneswara being doubtful For this reason though the text of Manu 'he divided the property amongst the sons' is of general application and is said to be in support of the equal partition and against the unequal partition, yet it is set aside by (the rule 'the experts in the science of logic consider that *nityânuvâda** is no *vidhi* and shows the weakness based on the absence of the sutras, its refutation is there clear and has been shown previously By this it is also refuted that the unequal partition at the option of the father in his self-acquisition is in accordance with the law and also virtuous The father in the course of the partition during his life shall not give preference to one, nor shall he deprive another of his share capriciously without any cause

Mitakshara

न्यूनाधिकविभागेन विभक्तानां पुत्राणामसौ न्यूनाधिकविभागोयदि धर्म्यः शास्त्रोक्तो भवति तदासौ पितृकृत कृतएव न निवर्तते इति मन्वादिभिः स्मृत । अन्यथा तु पितृकृतोऽपि निवर्तत इत्यभिप्राय । यथाह नारदः । व्याधित कुपित ेव

* As for the explanation, see the Mimânsâ Introduction Vol XXVIII. P. P XXIV and XXVII

विषयासक्तमानसः । अन्यथाशास्त्रकारी च न विभागे पिता प्रभुरिति । १३ ॥

न्यूनाधिकविभागेन nyûnâdhika vibhâgena, by an unequal partition, विभक्तानाम् vibhaktânâm, separated पुत्राणाम् putrânâm, among sons, असौ asau, that न्यूनाधिक विभागः nyûnâdhika vibhagah, partition of more or less, यदि yadi, when धर्म्यः dharmyah legal शास्त्रोक्तः śastra uktah, as ordained by the law, भवति bhavati, is तदा tadâ then, असौ asau, that, पितृकृतः pitri kritah, made by the father कृतः kritah, made, एव eva, finally, completely, already न na not निवर्तते nivartate, can be set aside इति iti, so, मन्वादिभिः manvâdibhih, by Manu and the rest, स्मृतः smritah ordained, declared अन्यथा anyathâ, otherwise, else तु tu, but, पितृकृतः pitrikritah, made by the father, अपि api, also, निवर्तते nivartate, can be set aside इति iti, such is, अभिप्रायः abhiprâyah the meaning, यथा yathâ as आह âha, says, नारदः nâradah, Nârada, व्याधितः vyâdhitah, afflicted by disease, कुपितः kupitah, influenced by wrath, विषयासक्त-मानसः vishayâsakta mânasah, whose mind is engrossed by a beloved object, अन्यथा-शास्त्रकारी anyathâ śâstra kâri, one who acts otherwise than the law permits च cha and, न nâ, not, विभागे vibhâge, in the distribution (of the estate), पिता pita, the father, प्रभुः prabhuh, has power, इति iti, thus

14. When the distribution of more or less among sons separated by an unequal partition is legal or such as ordained by the law, then that division, made by the father, is completely made, and cannot be afterwards set aside as is declared by Manu and the rest. Else it fails, though made by the father. Such is the meaning; and in like manner, Narada declares, "A father, who is afflicted with disease, or influenced by wrath, or whose mind is engrossed by a beloved object, or who acts otherwise than the law permits, has no power in the distribution of the estate."

Bâlambhatta's gloss

14 The text of Kâtyâyana applies to the case of an innocent son and is, therefore not contradictory and does not support your view (says an objector) He (the author) says in reply that the words 'more or less' show partition 'Less,' therefore "The sons should be maintained and guided by the shares—whether equal, less or more—allotted to them by the father" Brihaspati "Whatever share has been alloted by the father on partition (to the sons), is in accordance with law, because he is master of all" Narada XIII 15 support it The meaning of 'in accordance with dharma (law)' is 'as laid down by the Scripture' Being not connected here and by filling up many ellipsis it is explained If the prohibi-

tion is not explained, there is shifting of ground he, therefore gives a distinction. 'Else' (anyathâ) means 'it is illegal', there is another reading *ayathâ sastra* (not in accordance with the Śastra) The meaning is the same as 'anythâ', another reading

END OF SECTION II

SECTION III

Mitâkṣrâ

इदानीं विभागस्य कालान्तरं कर्त्रन्तरं प्रकारनियममाह

विभजेरन्सुताः पित्रोरूर्ध्वं रिक्थमृणं समम् ।

इदानीम् idânim, next, now, विभागस्य vibhagasya, of the partition ; कालान्तरम् kâlântaram another period, कर्त्रन्तरम् kartrantaram, other persons as making it, प्रकारनियमं prakâra niyaman, a rule respecting the mode, आह âha, propounds, विभजेरन् vibhajeran, should distribute, सुताः sutâḥ, sons, पित्रोः pitroh, the parents (two), ऊर्ध्वम् ûrdhvam, after रिक्थम् riktham, the effects, ऋणम् riṇam, the debts, समम् samam equally

1. The author next propounds another period of partition, other persons as making it, and a rule respecting the mode. "Let sons divide equally both the effects and the debts after (the of demise of) their two parents."

Bâlambhatta's gloss

1 In this way, he has given three periods of partition during the father's life time, the collection of texts was with the object that the father was alive Now after his death the era is another fourth period as regards this, he expresses his opinion 'So he says' he gives the original in support 'Now' (M) means after having said all this In this way, the sage has divided it into two only, one during his life time and the other after his death There are three alternatives as to the partition during the father's life time (1) at the option of the father (2) without his wish the latter should also be understood two fold according to the above said rule By (the passage) "Or all may be equal sharers" (114) it is also shown, both alternatives should be understood to be included in

an equal partition He gives the special feature of the third (distinguishing it from the former 'Propounds a rule'

Mitākṣarā

पित्रोर्मातापित्रोरूर्ध्वं प्रयाणादिति कालोदर्शित । सुताइति कर्तारोदृर्शिता सममिति प्रकार नियमः सममेवेति रिक्थमृण च विभजेरन् ।२॥

पित्रोः pitroh, of the two parrents मातापित्राः mātā pitroh, of the mother and the father, ऊर्ध्वम् ūrdhvam, after, प्रयाणात् prayānād, the demise, इति iti, so, कालः kālah, period, दर्शितः darśitah, is shown, सुताः sutāh, the sons इति iti, by these, कर्तारः kartārah, the persons as making दर्शिताः darśitāh, are shown, समम् samam, equably, इति iti, by this प्रकार-नियम prakāra niyamah, a rule as to the mode, समम् samam, equally, in equal shares एव eva, indeed only, इति iti, thus, रिक्थम् riktham, effects, ऋणम् rinam, debts, विभजेरन् vibhajeran, they should divide

2 After their two parents] After the demise of the father and mother here the period of the distribution is shown. The sons] The persons, who make the distribution, are thus indicated Equably] A rule respecting the mode is by this declared in equal shares only, should they divide the effects and debts.

Bālambhatta's gloss

2 In order to set aside the breakingup of the compound (माता च पिता च) he says 'mother', he explains the appropriateness of 'after', 'after the departure (demise)' means after the death 'Sons' (सुताः) should also be understood ekaśeṣa compound (सुतश्च सुतौ च) like the preceding the paternal uncles being prior should be considered first entitled in partition, the daughters being specially dealt with should not be considered first entitled here How can it be a restrictive rule by this bare statement without 'eva' (only)? He, therefore, gives as its substance in the shape of a restrictive rule 'Equably,' means 'according to the rule of the (सर्वत्वाद्य)'* in order to remove the doubt as to equality and to achieve the object to be stated, he includes debts *

* The Maxim is (सर्वयत्त्व मात्रपरम्) It applies when in a sentence there is no word denoting definiteness, the definiteness will be fixed where the sense requires it, but where there are words such as एव etc to denote definiteness, the maxim does not apply See Vāchaspatya

Mitâkṣarâ

ननूर्ध्वं पितुश्च मातुश्चेत्युपक्रम्य (मनु० अ० ९ श्लो० १०५) ज्येष्ठ एव तु गृह्णीयात्पित्र्यं धनमशेषतः। शेषास्तमुपजीवेयुर्यथैव पितरं तथेत्युक्त्वोक्तम् (मनु० अ० ९ श्लो० ११२) ज्येष्ठस्य विंश उद्धारः सर्वद्रव्याच्च यद्वरम्। ततोऽर्धं मध्यमस्य स्यात्तुरीयं तु यवीयस इति। सर्वस्माद्धनसमुदायाद्विंशतितमो भागः सर्वद्रव्येभ्यश्च यच्छ्रेष्ठं तज्ज्येष्ठाय दातव्यम्। तदर्धं चत्वारिंशत्तमो भागो मध्यमं च द्रव्यं मध्यमाय दातव्यम्। तुरीयमशीतितमो भागो हीनं द्रव्यं च कनिष्ठाय दातव्यमिति मातापित्रोरूर्ध्वं विभजतामुद्धारविभागो मनुना दर्शितः। तथा। (मनु० अ० ९ श्लो० ११६।११७) उद्धारेऽनुद्धृते त्वेषामियं स्यादंशकल्पना। एकाधिकं हरेज्ज्येष्ठः पुत्रोऽध्यर्धं ततोऽनुजः। अंशमंशं यवीयांस इति धर्मो व्यवस्थित इति। ज्येष्ठस्य द्वौ भागौ तदनन्तरजातस्य सार्धं एको भागः ततोऽनुजानामेकैको विभाग इत्युद्धारव्यतिरेकेणापि विषमो विभागो दर्शितः। पित्रोरूर्ध्वं विभजतां जीवद्विभागे च स्वयमेव विषमो विभागो दर्शितो ज्येष्ठं वा श्रेष्ठभागेनेति। अतः सर्वस्मिन्नपि काले विषमो विभागोऽस्तीति कथं सममेव विभजेरन्निति नियम्यते। ३ ॥

ननु nanu, but, ऊर्ध्वम् ûrdhvam, after, पितु, pituh, the father, च cha, and, मातु mâtuḥ, the mother, च cha, and, इति iti, so, उपक्रम्य upakramya, having promised, ज्येष्ठः jyeṣṭhaḥ, the eldest, एव eva, only, indeed, तु tu, but, गृह्णीयात् gṛhṇîyât, may take, पित्र्यम् pitryam, the paternal, of the father, धनम् dhanam, wealth, अशेषतः aśeṣataḥ, entire, शेषाः śeṣâḥ, the rest, तम् tam, him, उपजीवेयुः upajîveyuḥ, live under, यथा yathâ, as, एव eva, just, exactly, पितरम् pitaram, under their father, तथा tathâ, so, इति iti, thus, उक्त्वा uktvâ, having declared ज्येष्ठस्य jyeṣṭhasya, for the eldest, विंशः vimśaḥ, the twentieth part, उद्धारः uddhâraḥ, the portion deducted, सर्व-द्रव्यात् sarva-dravyât, of all the chattels, च cha and, यद् yad, whatever वरम् varam, is the best, ततः tataḥ, of that, अर्धम् ardham, half, मध्यमस्य madhyamasya, for the middle one, स्यात् syât, should be तुरीयम् turîyam, the fourth part, तु tu, but, यवीयसः yavîyasaḥ, of the younger, इति iti, thus, सर्वस्मात् sarvasmât, from of all, धनसमुदायात् dhana samudâyât, the aggegate wealth, विंशतमः vimśatamaḥ, the twentieth, भागः bhâgaḥ, part, सर्वद्रव्येभ्यः sarvadravyebhyaḥ, of all the chattels, च cha, and, यत् yat, whatever, श्रेष्ठम् śresṭham, the best, तत् tat, that, ज्येष्ठाय jyeṣṭhâya, to the eldest, दातव्यम् dâtavyam, should be given, तदर्धम् tadardham, half of that, चत्वारिंशत्तमः chatvârimsat-tamaḥ, the fortieth, भागः bhâgaḥ, part, मध्यमम् madhyamam, the middle, च cha, and द्रव्यम् dravyam, chattels, मध्यमाय madhyamâya, to the middle one, दातव्यम् dâtavyam, should be given तुरीयम् turîyam, the one-fourth part, अशीतितमः aśîtitamaḥ, the eightieth, भागः bhâgaḥ, part, हीनम् hînam,

ordinary, of a baser kind, द्रव्यम् dravyam, chattels, कनिष्ठाय kaniṣṭhâya, to the youngest दातव्यम् dâtavyam, should be given, इति iti, so, माता-पित्रोः mâtâ pitroḥ, mother and father, ऊर्ध्वम् ûrdhvam, after, विभजताम् vibhajatâm, of those that divide, उद्धार uddhâra, of shares, विभाग vibhâgaḥ, distribution, मनुना mananâ, by Manu, दर्शितः darśitaḥ, is shown, तथा tathâ similarly, उद्धारे uddhâre, in case the share, अनुद्धृते anuddhṛte, is not deducted, तु tu, but एषाम् eṣâm, for these, इयम् iyam, this, स्यात् syâd, should be, अंश कल्पना aṁśa kalpanâ, the plan of shares, the distribution of shares, the manner of distribution, एकाधिकम् ekâdhikam, greater by one share, double share, हरेत् haret, should take, ज्येष्ठः jyeṣṭhaḥ, the eldest, पुत्रः putraḥ, the son, अध्यर्धम् adhyardham, a share greater by half ततः tataḥ after that, than that, अनुजः anujaḥ, next born, younger, अंशम् aṁśam, a part each, यवीयांसः yavîyâṁsaḥ, the younger ones, इति iti, thus, धर्मः dharmaḥ, the law, व्यवस्थितः vyavasthitaḥ, settled, इति iti, so, ज्येष्ठस्य jyeṣṭhasya, for the eldest, द्वौ dvau, two, भागौ bhâgau, parts, तदनन्तरजातस्य tadanantarajâtasya, for the one born next, सार्धम् sârdham, with a half, एको भाग eko bhâgaḥ, one part, ततः tataḥ, than that, अनुजानाम् anujânâm, for those that are younger, एकैकोविभाग ekaeko vibhâgaḥ a part each, इति iti, thus, उद्धार-व्यतिरेकेण uddhâra vyatirekena, without deductions, अपि api, even, विषमः viṣamaḥ, an unequal, विभाग vibhâgaḥ, share, दर्शितः darśitaḥ, is shown, पित्रोः ऊर्ध्वम् pitroḥ-ûrdhvam, after the parents विभजताम् vibhajatâm for those as dividing, जीवद्विभागे jivad vibhage, when a division is made during life time, च cha, and, स्वयम् svayam, by himself एव eva विषमः viṣamaḥ, an unequal, विभाग vibhâgaḥ distribution दर्शितः darśitaḥ, is shown, ज्येष्ठम् jyeṣṭham, the eldest, वा vâ, or, श्रेष्ठभागेन śreṣṭha bhâgena, by the best (greatest) share, इति iti, so, thus, अतः ataḥ by this, hence, सर्वस्मिन् sarvasmin, at all, अपि api, even, काले kâle, at periods विषमः viṣamaḥ, unequal, विभाग vibhâgaḥ distribution, अस्ति asti, there is, इति iti so, कथम् katham, how, समम् samam in equal parts एव eva, only, विभजेरन् vibhajeran, should distribute, इति iti, so, नियम्यते niyamyate, a restriction is introduced, a rule is made.

8 But Manu, having promised "partition after the death of the father, and the mother" and having declared, "The eldest brother may take the patrimony entire, and the rest may live under him as under their father, has exhibited a distribution with deductions, among brethren separating after the death of their father, and mother ' The portion deducted for the eldest is the twentieth part

of the heritage with the best of all the chattels, for the middlemost, half of that; for the youngest, a quarter of it.' The twentieth part of the whole amount of the property (to be divided and the best of all the chattels, must be given (by way of deduction) to the eldest, half of that, or a fortieth part, and a middling chattel, should be allotted to the middlemost, and a quarter of it, or the eightieth part, with the worst chattel, to the youngest. He has also directed an unequal partition, but without deductions, among brethren separating after their parent's decease, allotting two shares to the eldest, one and a half to the next born, and one apiece to the younger brothers, 'If a deduction be thus made, let equal shares of the residue be allotted but, if there be no deduction, the shares must be distributed in this manner, let the eldest have double share, and the next born a share and a half, and the younger sons each a share, thus is the law settled The author himself has sanctioned an unequal distribution when a division is made during the father's life-time ("Let him either dismiss the eldest with the best share &c "). Hence an unequal partition is admissible in every period How then is a restriction introduced, requiring that sons should divide only equal shares?

Bâlambhatta' gloss

8 The first period of the partition during the life time of the father, has been said to be unequal in the original, the same has been said to be appliable to the partition after the death of the parents by Manu and others When there is option by reason of the validity of both and when the equal and unequal partitions are both in accordance with law it is proper to explain 'equal' to mean 'as equal also' but not 'equal only' He accordingly doubts the propriety of the explanation while laying down a restrictive rule From 'after .... ' to 'restriction introduced'.. ' 'After' has been already explained and is written (used) with the object to mean 'after their demise', so also in the succeeding part, Patrimony (pitryam) means 'come down from the father', aśeṣah (entire) has *tasi* affix which is added in all forms of declensions, 'the rest' i e other than the edest brother 'Live under him,' follow him like their father, it depends on the seniority by birth So says Manu ' The eldest brother like the father may voluntarily support all, or the younger brother, if cap-

able, for the mainstay of the family depends on one's capacity" "With the consent of all let the younger brother if capable with the wish of all support others" Nārada XIII 5 It is a subject of consensus of opinion Thus in Manu the seniority is meant by implication, this he explains, 'of all the chattles' means 'of those to be divided' deduction is understood, धन is added in accusative, it means 'that which is deducted and is yogarudhi (conventional) it is connected with the succeeding under the rule of मध्यमणि* He says with the inherent power of it, 'all,' although it is connected with 'may be' brought in from elsewhere, yet he gives the result 'to the oldest' means by those who make partition or strangers or mutually By 'iti' he means that having said so, in these texts of Manu as indicated by 'iti', it is shown, therefore, to those who make partition, similarly in the following its meaning is that all should equally divide the rest of the property He gives the unequal partition mentioned by Manu in a different way, "similarly (tathā)... . .... of those who divide" is connected with 'similarly it is sanctioned', 'of those' means 'of the eldest', 'this' (ayam) to be stated, its explanation, 'of the eldest', it is also of the seniority by reason of the subject and the management · he goes on to say further applying it to the subsequent : 'by the parents', is there no unequal partition, as it is not mentioned in the original? He replies to the objection with an illustration That it does not apply, is refuted by 'while alive' (जी वा), 'himself' by the text writer. it conveys the meaning to the effect that it is difficult to say that the original text-writer did not wish it anywhere else. The absence thereof can not be easily accounted for by reason of the general nature of the smriti texts and the want of proof there, he therefore says 'hence.'

Mitākṣarā

अथोच्यते । सत्यम् । अयं विषमो विभागः शास्त्रदृष्टस्तथापि लोकविद्विष्टत्वान्नानुष्ठेयः । अस्वर्ग्यं लोकविद्विष्टं धर्म्यमप्याचरेन्न त्विति निषेधात् । यथा । महोक्षं वा महाजं वा श्रोत्रियायोपकल्पयेदिति विधानेऽपि लोकविद्विष्टत्वादननुष्ठानम् । यथा वा मैत्रावरुणीं गां वशामनुबन्ध्यामालभेतेति गवालम्भनविधानेऽपि लोकविद्विष्टत्वादननुष्ठानम् । ४ ॥

* मध्यमणिन्याय is akin to मध्यदीपिका न्याय which is called the maxim of the central lamp. "The idea is of a lamp in a central position shedding its light on both sides Akin to this is मध्यमणि न्याय which is explained in the Pan'it for Dec. 1867 as referring to the central ruby of a nose ring which casts a lustre on the pearl on each side of it." Jacob's Handful of popular maxims

अत्र atra, in this question वक्ष्यते uchyate, it is said, सत्यम् satyam, true, अयम् ayam this, विभागः vibhâgah distribution, शास्त्रदृष्टः śâstra drishtah, found in the sacred ordinances तथापि tathâ, pi, still लोकविद्विष्टत्वात् loka vidvishtatvâ because it is abhorred by the world, न na not अनुष्ठेय anusthe ... should be practiced ; अस्वर्ग्यम् asvargyam, not securing celestial bliss लोकविद्विष्टं loka vidvistam, abhorred by the world, धर्म्यम् dharmyam legal अपि api, even though आचरेत् âcharet, should practice न na, not तु tu but, इति iti, thus निषेधात् nishedhât owing to the prohibition because of the prohibition यथा yathâ as, महोक्षम् mahoksam a great bull वा vâ either महाजम् mahâjam a great goat ; वा vâ or, श्रोत्रियाय śrotriyâya, to a venerable priest उपकल्पयेत् upakalpayed, should offer ; इति iti, thus विधाने अपि vidhâne api, though there is this injunction, लोकविद्विष्टत्वात् loka vidvistatvât, on account of popular prejudice अननुष्ठानम् ananusthânam non performance, यथा yathâ, as, वा vâ, or, मैत्रावरुणीम् maitrâvarunim, consecrated to Mitra and Varuna, गाम् gâm, cow, वशाम् vasâm, a victim अनुबन्ध्याम् anuvandhyâm, a barren, आलभेत alabhet, should slay, इति iti, so, thus गवालम्भन विधाने अपि gavâlambhan vidhâne api, though there is an injunction for killing of a cow, लोक-विद्विष्टत्वात् loka vidvistatvât, because of the prejudices of the people, अननुष्ठानम् ananusthânam, should not practise

4 The question is thus answered, True, this unequal partition is found in the sacred ordinances, but it must not be practised, because it is abhorred by the world, since that is forbidden by the maxim, "Practice not that which is legal, but is abhorred by the world for it secures not celestial bliss" as the practice of offering bulls is shunned, on account of pupular prejudice, notwithstanding the injunction, "Offer to a venerable priest a bull or a large goat" , and as the slaying of a cow is for the same reason disused, notwithstanding the precept, "Slay a barren cow as a victim concsecrated to Mitra and Varuna"

Bâlambhatta's gloss

4 Though by "true" etc. he accepts its reality and rejects the proof in favour of its unreality, yet he does not accept the validity thereof in practice 'World, though abhorred by the world yet sanctioned by the Scripture and the people how is it not practicable? The reply is 'not conducive to heaven which means that even a virtuous act if abhorred by the people should not be acted upon because it does not secure heaven Unheavenliness is the reason for its absence The meaning is that the Scripture having said so, it should not be acted up

on Here he gives an illustration from the smriti 'as' it is original He gives it from the sruti 'or as', 'let one offer a barren cow consecrated to *Mitra* and *Varuna* the twin deities' The *anuvandhyesti (sacrifice* of a barren cow) has been laid down by Âpastamba in a soma sacrifice after *udavasâniya* (last day) For the present he himself having allowed curd dish at the same place it should be understood that the latter is to be practised by the sacrificers

Mitâkshara

उक्तं च। यथानियोगधर्मो नो नानुबन्ध्यावधोऽपि वा। तथोद्धारविभागोऽपि नैव संप्रति वर्तत इति। ५॥

उक्तम uktam, it is expressly declared च cha and यथा yathâ just as, नियोग धर्मः niyoga dharmah, the duty of an appointment (to raise up seed to another) न nah, for as (is not practiced), न na nor, अनुबन्ध्या anuvandhyâ of a barren cow वध vadhah the slaying, अपि api, also; वा vâ, or, तथा tathâ, similarly, उद्धारविभाग uddhâra vibhâgah, partition with deduction, अपि api, too, न, na not, एव eva indeed, संप्रति samprati at present, वर्तते vartate, is in vogue

5 It is expressly declared "As the duty of an appointment (to raise up seed to another,) and as the slaying of a cow for a victim are disused, so is partition with deductions (in favour of elder brothers)".

Bâlambhatta's gloss

II Having thus generally stated the desuetude of the unequal partition in the *kaliyuga* but not before and suggesting that even with the aid of the illustrations explaining the same and laying down the unequal partition with the additional share by deduction, he cites the text of *Bhatta prohibiting the unequal partition* with the said illustrations 'And it is said', '*niyojah*' (appointment) ceremony 'just other', other than the *Vedic* ceremony sanctioned by an injunctive text just like the *sacrifice of a great bull etc should not (be allowed)* the '*not*' (*na*) should be connected with both In the reading 'धर्मो नो' (no duty) it means the duty of appointment नियोग it should be understood that the birth of a son from the husband's brother under (the text) "*The husband's brother being* directed by the elders shall cohabit with the sonless (widow)' I 68 'no' नो is in the negative sense Anuvandhya' means a barren cow, 'also' or in conjunction 'deduction' means 'additional share in a partition', 'also' is the second conjunction; 'now' in the *Kaliyuga* He has therefore quotes from *Brahma purâna* 'the marriage of a married woman

making a par ition in his lifetime, should distribute the heritage equally among his sons", and having stated, as the doctrine of some, the eldest's succession to the whole estate, ("Some hold, that the eldest is heir,") ; and having exhibited, as the notion of others, a distribution with deductions ("In some countries, the gold, the black kine, and the black produce of the earth, belong to the eldest son ; the car appertains to the father ; and the furniture in the house and her ornaments are the wife's; as also the property [received by her] from kinsmen, so some maintain") has expressly forbidedn it as countrary to the law, and has himself explained its inconsistency with the sacred codes; "It is recorded in Scripture, without distinction, that Manu distributed his heritage among his sons"

Bālambhatta's gloss.

8 *Apastamba* has also disapproved of it; so it is connected. Though he says before, '*While alive*', though having consoled the eldest son with an excellent gift, yet it does not lead to the unequal partition but to the giving of consolation to him Let him then satisfy his edest son with some chief precious article like a cow etc as explained previously. With this object in view, he says, '*his own opinion.*' Superseding 'the drunk or intoxicated', in the absence of a son, the nearest kinsman (sapinda), in his absence, the preceptor, in his absence the resident student may inherit the property and apply it in pious and religious objects ; or the daughter, in the absence of all, the king may take the whole property:and 'having said so much' is understood 'The whole estate', here the claimant is the eldest son alone : it was already explained previously. Gautama also says, 'The whole goes to the seniormost who maintains others." '*in countries*' etc , in some particular country. Haridatta says "gold, black kine, 'black produce of earth' means black cereals produced from earth as rice and beans, some say, it means iron. All these go as the share of the eldest son The chariot, the furniture of the house, utensils, stools etc go to the father. The worn ornaments fall to the share of the wife, others are of opinion that wealth got from the caste-people also go to the share of the wife" 'Contrary' against; '*he himself*', Āpastamba himself *Manu* , it is a quotation from the Taittireya Samhitā (III-1 9 4) There '*among his sons*' being in the plural and 'heritage' being in the singular, the inference is that it applies without distinction (generally) It is subsequent , and it is also treated as a solitary text "he separates the eldest son with the wealth", but the expert logicians do not consider *nityānuvāda* to be *vidhi* so it is said See Mandlik introduction vol XXVIII, p, p XXIV and XXVII

Mitakṣrā

तस्माद्विषमोविभाग शास्त्रदृष्टोऽपि लोकविरोधाच्छ्रुतिविरोधाच्च नानुष्ठेयइति

समभेव विभजेरन्निति नियम्यते । ७ ॥

तस्मात् tasmâd, therefore, विषम visamah unequal विभाग vibhâgah, distribution, शास्त्रदृष्टः sâstradristah noticed by the codes of law, अपि api, though, लोकविरोधात् loka-virodhâ because of its disapproval by the world, श्रुतिविरोधात् śruti virodhât, because of the contrariness to the scripture, because ... against the scriptures च cha, and न na, not, अनुष्ठेय anustheyah, should be practised, इति iti for this reason, समम् samam, in equal parts, एव eva, only विभजेरन् vibhajeran, should distribute, इति iti, so, नियम्यते niyamyate, a rule is made a restriction is ordained

7 Therefore, unequal partition, though noticed in codes of law, should not be practised, since it is disapproved by the world and is contrary to Scripture. For this reason, a restriction is ordained, that brethren should divide only in equal shares.

Bâlambhatta's gloss

7 He concludes the established truth (siddhânta view) there fore', 'scripture' means the sages. Equal' Therefore this relates to the partition during the lifetime which is set forth as a reply and is also later on maintained, 'or the eldest' on the contrary relates to some other *yuga*, like others. "The father while alive should not give preference to one over the others, nor shall he deprive another of his share capriciously for no cause"

This from Kâtyâyana is also in favour Therefore 'less or more' which has been said above under the text of Nârada does not mean that it should be so acted upon but if a father by chance under the authority of the Scripture without noticing the special text makes an unequal partition in the manner as laid down by the Scripture, it is not to be set aside This is the purport but the real meaning has already been expressed by the commentator, it should be borne in mind that there is no contradiction.

Here 'after the father's demise is said and Manu has also supported it by 'after the death of the father and mother' (IX—104) So the period after the death of both is obtained i e after the death of each of them, in this view, while the father is alive the partition can be effected after the death of the mother similarly 'when the father is dead but the mother is alive it does not necessarily follow that the desired partition should be effected But what has been said previously under the text of Gautama 'after the death of the father' and what is to be said hereafter in the original, the principal cause is the father's death, and the mother's death is of secondary importance So 'the period after the death of the father' by reason of the existence or non existence of the mother is two fold, but it is understood to mean 'fatherlessness'

and is not in conflict with what is to be said hereafter Just as, in the first division three are included, so in it there are two, therefore the partition during his life and after his death is two fold and allowed by law but not the third of the motherless It is not so according to the text of Manu, 'they are dependent while the parents are alive' (M VIII-171), the cause arises after the death of both, being in conformity to the unity of a sentence in the original as laid down, how can it be then interpreted that way? Always to avoid the unavoidable contradiction that is to arise, even on the husband and wife having a right to a share according to Âpastamba but she has no such right to become separate like the sons, by reason of being the better half, she is everywhere in a company, the sense has been previously given she being accordingly placed on an equal level with the sons, possesses the proprietary right like them The sons have no right to claim partition during the life time of the mother and have no right to disposal at their will by reason of want of ownership This is the meaning of Manu That is also the meaning of the original 'after the death of the parents' Śamkha also means the same when he says, "Those whose father is alive are dependent, so are they who have mother"

'On the death of the father, let the sons divide the father's property, when the sinless father is alive they have no ownership,' Devala,

Or let 'while the father is alive', be alone it relates to the self-acquired property Similarly when the mother is alive it relates to her personal property Further the result of 'the parents' will be later on explained By this, the statement of Hardatta (to the effect) that there is no right of partition *inter se* between the husband and wife by reason of Âapstamba having said nothing about it previously, is refuted So on the death of the father and even if the mother is alive there arises a right to partition, but not at the option of the mother nor has she a right to claim it This is to be borne in mind To sum up while the father is alive, there are three periods of partition, with the consent of the father, two, 'when', two In the first, at the instance of the father, in the last two, at the instance of the son The allotment is equal everywhere In the first case, the parents have equal shares, similarly in other two cases but it is when no separate property is given to the mother If the separate property is given, then her share is *half* On the death of the father, there are two periods by reason of the existence or non existence of the mother at the instance of the sons, the partition is equal In the first case the mother has also an equal share The mother's will is never the governing factor, nor does partition take place at her instance It relates to the movable property, pure self acquired property and *the ancestral mixed with self acquired property* In the pure ancestral property there is a peculiarity which is to be dealt with later on there the mother has no share Thus we have partition of the property that has descended unmixed with the earning of the father, mixed with such earnings and pure earning of the father, on the death of the father We have *also self acquisitions of two kinds (1) ante nuptial* and (2) post nuptial In the first case we have the rule relating to it under

the text

In the self acquisitions of the father, the sons are not entitled to claim a partition without the wish of the father, but in the house and land properties which have descended, the father and sons have equal shares; he may not divide his self-acquisitions among his sons without his wish." Gautama "In the ancestral property whether immovable or moveable the father and son are declared to possess equal ownership But the lost ancestral property which the father has recovered with his effort and what he has acquired by his special knowledge or heroism is the exclusive property of the father Let him make a donation of it at his option and then enjoy what is left out, in his absence, the sons are declared to be equal sharers" In these quotations from Brihaspati, by suggesting the sole participation of the sons with their father, then in the texts showing the shares of others as for instance he makes allotments' II 115 'after the father' (II 123) and laying down the share of the mother, there is nothing which entitles the mother to claim partition It is proper because the word 'partition' means a separate allotment by virtue of the original right arising from co ownership with another and a separate share therein to be determined along with that of others who have equal proprietary right The daughters in-law etc have no proprietary right in the property of the father in law by birth owing to the absence of the prior relationship If one says that there will be future relationship, it will be stretching the rule to its extreme limit by reason of the foreign birth No relationship arises by marriage because after marriage she becomes a companion, nor by the death of her husband, because he is not her progenitor but in reality her right is obstructed by the proprietary right of the son otherwise by reason of the mutual partition of the property of the sonless among the wives of his uncles or grand sons, there will be a conflict with (the rule laid down in) the original 'by the different fathers' (II 120) A mother has, therefore, no share in the property acquired by the father before marriage "Shall take equal share" applies where there is pre-existing ownership by reason of 'take', but where there is no such pre existing right, the words 'give' 'acquire' etc are appropriate According to others, when there are immovable properties of both kinds, the sons have ownership by reason of the possibility of the confusion to be stated here after

The post nuptial earning of the father is also two fold, movable and immovable As to that, some say that under 'although the mother may take an equal share' both are equally meant, but by reason of the connection of the text 'to whom no separate property has been given' (II 115)), it applies to the moveable property only It follows that it does not depend on the maker and partition but on the relinquishment (donation),* this is the unanimous opinion So when one is not given any property by the husband or the father in law specifically, she may take the share, on saying this, it means that when she is given a share specifically 'by so and so' it becomes her share and she gets no other If it is equal to the son's share, that which was given before also becomes

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partible, If it is in excess, the equal is partible and the excess is (considered) gifted one Hence if it was given without consent by reason of the absence of the power (of gift) on account of the existence of the son's ownership, the adjustment can be made by giving from the equal share of the son but it is not by right. If it is less, in order to avoid inequal division with other mother, it should be equalised from the property to be partitioned. In the passage 'If given (the separate property) half should be given' means that the given property should be made a part of the share so that it may be equalised from the other shares. Similarly in the passage "the mother should get an equal share", it means that she should be made separate owner along with the son. Here the immovable property being not subject to partition should not form part (of her share) by reason of the commentator's use of such expresions 'at the pleasure of the husband' 'jewels and pearls' 'at the pleasure of the father' 'immovable and bipeds.'

"A female is said to be always at liberty in selling and giving the saudâyika (personal property) even if it is immovable. On the death of her husband a female can spend her husband's inheritance (भर्तृदाय) at her option; she must protect it while he is alive or otherwise spend it for the family purposes, A sonless widow under the guidance of the elders, keeping the bed of her husband unsullied, should enjoy it while controlling her passions till her death; the reversioners shall get it after her." From the passages of Kâtyâyana (it follows) that while the sons are alive, just as in the ancestral property so in his self-acquired immovable property, there is no ownership by reason of the right arising in future; in such a state there is no possibility of gift and sale. There is lightness (derogation) when it is repeated that there is no gift or sale in such cases; otherwise the difficulties will arise on breaking the prohibition laid down.

Gautama says "others also get a share following the share allotted to the sons and the unmarried daughters,..." Here avoiding the term 'similar' which is a synonym of 'equal', using 'just similar' a synonym of 'propotionate' and including the married daughters in the category show this meaning, by reason of the maintenance of the unmarried girls who are in the category of 'just similar' from the movables only. 'Just similar' by being a class of sharers is distinguished. Angirâ and Vyâsa say, "In the absence thereof, the mother is an equal sharer with the sons; their mothers are equal cosharers and the maidens are entitled to a

apavâdam, an exception ; आह âha, declared मातुः mâtuḥ, the mother's ; दुहितरः duhitaraḥ, the daughters ; शेषम् śeṣam, the residue ; ऋणात् ṛiṇât, after paying the debts.

8. It has been declared that sons may part the effects after the death of their father and mother. The author states an exception, in regard to the mother's separate property: "The daughters share the residue, of their mother's property, after payment of her debts."

Bâlambhatta's gloss.

8. He explains the relevancy ; '*the mother*', he explains it by repetition.

Mitâkṣrâ.

मातुर्धनं दुहितरो विभजेरन् । ऋणाच्छेषं मातृकृतर्णापाकरणावशिष्टं अतश्चर्ण-समं न्यूनं वा मातृधनं सुता विभजेरन्नित्यस्य विषयः । ९ ॥

मातुः mâtuḥ, the mother's , धनम् dhanam, the property ; दुहितरः duhitaraḥ; daughters विभजेरन् vibhajeran, should distribute , ऋणात् ṛiṇât, after the debts , शेषम् śeṣam, what has remained ; मातृकृत-ऋणापाकरणावशिष्टम् mâtṛi-kṛita ṛiṇâpâkaraṇâvaśiṣṭam, what has remained after paying debts of the mother , अतः ataḥ, hence , च cha, and , ऋणसमम् ṛiṇasamam, equal to her debts, न्यूनम् nyûnam, less, वा vâ, or, मातृधनम् mâtṛidhanam, the mother's effects . सुताः sutâḥ, the sons , विभजेरन् vibhajeran, may divide ; इति iti, such ; अस्य asya, of this , विषयः viṣayaḥ, purport.

9. Let the daughters divide their mother's effects remaining over and above the debts ; that is, the residue after the discharge of the debts contracted by the mother. Hence, the purport of the preceding part of the text is, that sons may divide their mother's effects, which are equal to her debts or less than their amount.

Bâlambhatta's gloss.

9. '*Mothers*', he proceeds to explain the subject under discussion ; 'contracted by the mother', by this ; "A son may be youngest of the senior wife and eldest of the junior wife, doubt arises how should there be a partition ? The eldest son gets a bullock as an additional share and others get the shares according to their mothers, after deductions of

the bullock allotted to the eldest, The eldest born from the senior wife gets 16 bullocks and the rest get the share according to their mother It is a settled rule When the sons are born of the wives of the same class without any speciality, the seniority does not depend on the mother but on the birth Even of (those born of) a Brahman woman, the seniority is determined by the birth, the seniority of the twins in the womb is also from the birth" (Manu IX 122 .126) "Those who are born of the same caste by one father from different mothers, get the shares through their respective mothers" Vyâsa

"Those step-sons who are of equal castes but born from one father should be allotted shares according to their mother" Brihaspati,

'Those who are of the same caste though several are entitled to get their respective shares',

All these are said to relate to some other period The exposition by Vyâsa and others without the additional share, in derogation to the equal partition supporting the unequal division is set aside by it by reason of its perversity, because it arises from the ignorance of the meaning of the smriti

Then in the exception, 'residue after the payments of debts' is useless, the reply is that taking thereof in the mother's share is not for one's own use, by reason of the unity of the sentence with 'in their default' and being the subject of the daughters' failure there is (ultimate) accomplishment (of possession) He therefore says, 'therefore' means by reason of laying down the special rule The purport is that in pursuance of the exception in the mother's property after the payment of debts while the daughters are alive, by reason of the advantage of that relationship, even when it is not partible by the sons by the non applicability of the exception on account of no equal or less remaining after payment of the debts and by reason of no right existing even when the daughters are alive, the general rule alone applies as the remainder after payment of the debts is not partible while the daughters exist, similarly the equal or less is not divisible by reason of its being necessarily payable, so he says

Mitâkşarâ

एतदुक्तं भवति । मातृकृतमृणं पुत्रैरेवापाकरणीयं न दुहितृभिः ऋणाप-यशिष्टं तु धनं दुहितरोऽर्हन्तीति । युक्तं चैतत् । पुमान्पुंसोऽधिके शुक्रे स्त्री भवत्य-धिके स्त्रिया इति स्त्र्यवयवानां दुहितृषु बाहुल्यात् स्त्रीधनं दुहितृगामि । पितृधनं पुत्र-गामि पित्र्यवयवानां पुत्रेषु बाहुल्यादिति । १० ॥

एतद् etad, this, उक्तम् uktam, meant, said, भवति bhavati, is, मातृकृतम् mâtṛikṛitam, contracted by the mother, ऋणम् ṛiṇam, the debts, पुत्रैः putraih, by the sons, एव eva, only, अपाकरणीयम् apâkaraṇiyam, must be

discharged, न na not, दुहितृभिः duhitribhih, by the daughters ऋणावशिष्टम् rinâvaśishtam remaining above her debts तु tu, but, धनम् dhanam, property, दुहितरः duhitarah, the daughters, गृह्णीयुः grihnîyuh, should take, इति iti so, युक्तम् yuktam fit, proper, च cha, and, एतत् etat, this, पुमान् pumân, the male issue, पुंसः pumsah, of the man, अधिके शुक्रे adhike śukre, if the seed be more, स्त्री stri a female issue, अधिके adhike, if the contribution be more, स्त्रियाः striyâh, of the woman, इति iti, thus, स्त्र्यवयवानाम् stryavayavânam the female portions, दुहितृषु duhitrishu, in the daughters, बाहुल्यात् bâhulyât, because they abound, स्त्रीधनम् stri dhanam, the woman's property, दुहितृगामि duhitr gâmi, goes to the daughters, पितृधनम् pitr dhanam, the father's estate, पुत्रगामि putra gâmi, goes to the sons, पित्रवयवानाम् pitravayavânâm, portions of the father, पुत्रेषु putreshu, in sons, बाहुल्यात् bâhulyât, because they abound, इति iti, so

10, The meaning is this A debt, incurred by the mother, must be discharged by her sons, not by her daughters, but her daughters shall take her property remaining above her debts, and this is fit, for by the maxim, "A male child is procreated if the seed predominate, but a female if the woman contribute most to the fœtus," the woman's property goes to her daughters, because portions of her abound in her female children, and the father's estate goes to his sons, because portions of him abound in his male children.

Bâlambhatta's gloss

10 'It' the meaning is that they shall take it subject to payment of the debt so he supports the textual contradictions with the arguments borrowed from other smritis 'Fit', 'the seed' is connected with both, by this a doubt that may arise to the contrary etc is set side Just as after the death (of the father) the sons etc make partition and while he is alive it is effected at their instance, so while the mother is alive, even on the proprietary right subsisting from the birth, the daughters have no right to claim partition, nor can it be effected at the mother's option by reason of there being no text (to that effect) but whatever she gives becomes that of theirs (donees') He, therefore says, 'by the parents to him (II 123) It was said previously that the wife's property is indivisible, but by the inherent force of the term, it relates to the subject of partition at the instance of the husband, so there is no conflict

Mitâksharâ

तत्र च गौतमेन विशेषो दर्शितः । स्त्रीधनं दुहितृणामप्रत्तानामप्रतिष्ठितानां

चेति । अस्यार्थः । प्रत्ताऽप्रत्तासमवायेऽप्रत्तानामेव स्त्रीधनम् । प्रत्तासु चाप्रतिष्ठिताप्रतिष्ठिता समवायेऽप्रतिष्ठितानां चेति । अप्रतिष्ठिता निर्धना ॥ ११ ॥

तत्र tatra, in that subject, च cha, and, गौतमेन Gautamena, by Gautama, विशेष visesah a special rule, दर्शितः darsitah, propounded, स्त्रीधनम् stri dhanam, a woman's property, दुहितृणाम् duhitrinam, belongs to the daughters, अप्रत्तानाम् aprattânâm, that are not given in marriage, अप्रतिष्ठितानाम् apratisthitânâm, that are not provided for च cha, and, इति iti, so, अस्य asya, of this, अर्थः arthah the meaning प्रत्ताऽप्रत्तासमवाये prattâ aprattâ samavâye, in the competition of the married and the unmarried अप्रत्तानाम् aprattânâm, of those that are unmarried, एव eva, only, indeed, स्त्रीधनम् stridhanam, the wife's property प्रत्तासु prattasu, amongst the married ones, च cha, and, अप्रतिष्ठिता प्रतिष्ठितासमवाये apratisthitâ pratisthitâ samavâye, in the competition of the unprovided for and the provided for, अप्रतिष्ठितानाम् apratisthitânâm, of those that are unprovided for, च cha, and, इति iti, so, thus, अप्रतिष्ठिताः apratisthitâh, unprovided for, निर्धना nirdhanâh, means poor, devoid of wealth, destitute of wealth

11. On the subject [of dauhhters] a special rule is propounded by Gautama "A woman's property goes to her daughter, unmarried, or unprovided" His meaning is this, if there be competition of married and unmarried daughters, the woman's separate property belongs to such of them as are unmarried, or, among the married, if there be competition of endowed and unendowed daughters, it belongs exclusively to such as are unendowed, and this term signifies 'destitute of wealth'

Bâlambhatta's gloss

11 Keeping this in view he lays down a special rule 'There' means 'on the subject of the daughters' Of the daughters' being applicable to all generally, it so applies the term 'of the unmarried' is useless, how can it be used in a special sense? His meaning', (prattâ) married; (aprattâ) unmarried, (pratisthitâ) endowed, wealthy, (apratisthattâ) unendowed, poor, the meaning is that there is no meaninglessness, by reason of denoting the special rule 'Exclusively' is to be repeated at both places.

Mitâksra

दुहित्रभावे मातृधनमृणावशिष्टं को गृह्णीयादित्यत आह

तान्यत्रृतेऽन्वयः ॥ ११७ ॥

दुहित्रभावे duhitrabhâve, in the absence of daughters ; मातृधनम् mâtridhanam, the mother's property ; ऋणावशिष्टम् ṛṇâvaśiṣṭam, remaining after paying the debts ; कः kaḥ, who ; गृह्णीयात् gṛihṇiyât, should take ; इति iti, so ; अतः ataḥ, hence , आह âha, says ; ताभ्यः tabhyaḥ, them ; ऋते ṛite, in the absence of ; अन्वयः anvayaḥ, the issue

12. In answer to the question, who takes the residue, of the mother's goods, after payment of her debts, if there be no daughter? the author adds, "And the issue succeeds in their default".

Bâlambhatta's glose.

12 *There is a doubt; 'daughter............who' ; the general rule relates to another subject and does not apply here, having explained the word meaning, he proceeds to explain the meaning of the sentence.*

Mitâkṣarâ

ताभ्यो दुहितृभ्यो विना दुहितॄणामभावे अन्वयः पुत्रादिर्गृह्णीयात् । एतच्च विभजेरन् सुताः पित्रोरूर्ध्वमित्यनेनैव सिद्धं स्पष्टार्थमुक्तम् । १३ ॥

ताभ्यः tâbhyaḥ, them ; दुहितृभ्यः duhitṛibhyaḥ, the daughters ; विना vinâ, in the absence ; दुहितॄणाम् duhitṛiṇâm, of daughters ; अभावे abhâve, in the absence of , अन्वयः anvayaḥ the issue ; पुत्रादिः putrâdiḥ, sons etc. ; गृह्णीयात् gṛihṇiyât, should take , एतत् etat, this ; च cha, and ; विभजेरन् vibhajeran, should distribute ; सुताः sutâḥ, the sons , पित्रोः pitroḥ, the parents , ऊर्ध्वम् ûrdhvam, after , इति iti, so , अनेन anena, by this , एव eva, indeed ; सिद्धम् siddham, was proved right ; स्पष्टार्थम् spaṣṭârtham, expressly ; उक्तम् uktam, has been declared.

13. On failure of daughters, that is, if there be none, the son, or other male offspring, shall take the goods. This, which was right under the first part of the text, ("Let sons divide equally both the effects and the debts;") is here expressly declared for the sake of greater perspicuity.

Bâlambhatta's glose.

'Of the daughters', it is already pointed out ; 'and this' ; 'accomplished' (siddham) means 'accomplished from the meaning', it means that it also relates to that subject like it.

END OF SECTION III.

SECTION IV

पितृद्रव्याविरोधेन यदन्यत्स्वयमर्जितम् ।
मैत्रमौद्वाहिकं चैव दायादानां नतद्भवेत् ॥ ११८ ॥
क्रमादभ्यागतं द्रव्यं हृतमप्युद्धरेत्तु यः ।
दायादेभ्योन तद्दद्याद्विद्यया लब्धमेव च ॥ ११९ ॥

पितृ द्रव्य-अविरोधेन pitri dravya avirodhena, without detriment to the father's estate, यद् yad whatever, अन्यत् anyat, else, स्वयम् svayam, by himself, अर्जितम् arjitam, earned मैत्रम् maitram, as a present from a friend, औद्वाहिकम् audvâhikam, as a nuptial present, च cha, and, एव eva, indeed, दायादानाम् dâyâdânâm, of the co heirs, न na, not, तद् tad, that, भवेत् bhavet, should be, क्रमात् kramâd, through succession, अभ्यागतम् abhyâgatam, come, द्रव्यम् dravyam, property हृतम् hritam, taken away, अपि api, even though, उद्धरेत् uddharet, would recover, तु tu but, य yaḥ, who, दायादेभ्यः dâyâdebhyah, to the parceners, न na, not, तद् tad, that, दद्यात् dadyât, should give, विद्यया vidyayâ, by learning, by science, लब्धम् labdham, acquired, एव eva, indeed, च cha, and

1. The author explains what may not be divided. "Whatever else is acquired by the coparcener himself, without detriment to the father's estate, as a present from a friend, or a gift at nuptials, does not appertain to the co-heirs. Nor shall he, who recovers hereditary property, which had been taken away, give it up to the parceners nor what has been gained by science"

Bâlambhatta' gloss

1. 'Not liable to partition', only with a view to strengthen partition there is, therefore, relevancy of the subject, this is the meaning Here the words 'or also' are in the sense of 'optional' there are other readings as (chaivatti) 'and also' and (cha) 'and' The word 'pitri' (father) is ekaśeṣa for the reason given above

Mitâkṣarâ

मातापित्रोर्द्रव्याविनाशेन यत्स्वयमर्जितं मैत्रं मित्रसकाशाद्यल्लब्धं औद्वाहिकं

विवाहलब्धं दायादानां भ्रातॄणां तच्च भवेत् । क्रमात्पितृक्रमादायात यत् किञ्चित् द्रव्यं अन्यैर्हृतमसामर्थ्यादिना पित्रादिभिरनुद्धृतं यः पुत्राणां मध्ये इतराभ्यनुज्ञयोद्धरति तद्दायादेभ्यो भ्रात्रादिभ्यो न दद्यात् । उद्धर्तैव गृह्णीयात् । २ ॥

मातापित्रोः mātā pitroḥ, of the father and mother द्रव्यविनाशेन dravyā vināśena, without any detriment to the goods of, यत् yat, whatever, स्वयम् svayam, by himself, अर्जितम् arjitam, acquired, मैत्रम् maitram, of a friend (means), मित्रसकाशात् mitra sakāśād, from a friend, यद् yad, whatever; लब्धम् labdham, is obtained, औद्वाहिकम् audvāhikam, pertaining to marriage (means) विवाह-लब्धम् vivāhalabdham, obtained in a marriage, दायादानाम् dāyādānām, of the coheirs (means), भ्रातॄणाम् bhrātṛīnām, of the brethren, तद् tad that, न na, not, भवेत् bhavet, should be, क्रमात् kramāt, through succession (means), पितृक्रमात् pitṛi kramād, through succession from ancestors, आयातम् āyātam, come, यत् किञ्चित् yat kiñchit, whatever, द्रव्यम् dravyam, wealth, property, अन्यैः anyaiḥ, by others, हृतम् hṛitam, taken away, असामर्थ्यादिना asāmarthyādinā, through inability or for any other cause, पित्रादिभिः pitrādibhiḥ, by the father etc, अनुद्धृतम् anuddhṛitam, not recovered, यः yaḥ, whoever, पुत्राणाम्मध्ये putrāṇāmmadhye, from amongst the sons, इतराभ्यनुज्ञया itarābhyanujnayā, with the permission, with the acquiescence of the others, उद्धरति uddharati, recovers, तद् tad, that, दायादेभ्यः dāyādebhyaḥ, to the co-heirs, भ्रात्रादिभ्यः bhrātrādibhyaḥ, to the brothers etc, न na, not, दद्यात् dadyāt, should give. उद्धर्ता uddhartā, the person recovering, एव eva, only, indeed, गृह्णीयात् gṛihṇīyāt, should take

2 That which had been acquired by the co-parcener himself without any detriment to the goods of his father or mother; or which has been received by him from a friend, or obtained by marriage, shall not appertain to the co-heirs or brethren. Any property, which had descended in succession from ancestors, and had been seized by others, and remained unrecovered by the father and the rest through inability or for any other cause, he, among the sons, who recovers it with the acquiescence of the rest, shall not give up to the brethren, or other co-heirs; the person recovering it shall take such property,

Bālambhaṭṭa's gloss.

■ 'Mother', he contrasts it with 'detriment', 'without detriment to the goods', 'that', whatever is understood by reason of such reading in

the original If there is (anyat) 'other' as the reading in the original, 'other' should be considered as understood It means the property different from that of the father He details the different kinds "by.... received from a friend etc", he uses the imperative mood without necessity. 'Shall not appertain' appertains, similarly in the following passage. 'Descended in success on' is the opening part of the second verse, he now explains 'why was it not recovered by the elders'? he replies 'through inability' If there is no acquiescence, then it is partible 'Of the rest', he gives the purport, the recoverer Similarly in the succeeding passage. He then gives a special rule

Mitâkṣara

तत्र क्षेत्रे तुरीयांशमुद्धर्ता लभते शेषं तु सर्वेषां सममेव । यथाह शङ्खः । पूर्वं नष्टां तु यो भूमिमेकश्चेदुद्धरेत्क्रमात् । यथाभागं लभन्तेऽन्ये दत्वांशं तु तुरीयकमिति । ३ ॥

तत्र tatra, there, क्षेत्रे kṣetre, if it be land, तुरीयांशम् turîyâmśam, the fourth part, उद्धर्ता uddhartâ, the recoverer, लभते labhate, obtain, शेषम् śeṣam, the remaining, तु tu, but, सर्वेषाम् sarveṣâm, of all, समम् samam, equally, एव eva, indeed, यथा yathâ, as, आह âha, says, शङ्खः śankhaḥ, Śankha, पूर्वम् pûrvam, formerly, नष्टाम् naṣṭâm, lost, तु tu, but, यः yaḥ, who; भूमिम् bhûmim, land, एकः ekaḥ, a single one, चेद् ched, if, उद्धरेत् uddharet, would recover, क्रमात् kramât, in succession, यथाभागम् yathâbhâgam, according to his due allotment, लभन्ते labhante, obtain, अन्ये anye, others, दत्वा datvâ, giving, अंशम् amśam, part, तुरीयकम् turîyakam fourth, इति iti, so

14 If it be land, he takes the fourth part, and the remainder is equally shared among all the brethren So Śankha ordains "Land, (inherited) in regular succession, but which had been formerly lost and which a single (heir) shall recover solely by his own labour, the rest may divide according to their due allotments, having first given him a fourth part."

Bâlambhatta's gloss

3 'And in the land', here 'and' is in the sense of 'but', the proper reading is 'and there in the land' 'Amongst them' means 'in their connection' Among all (means) 'among the recoverer and the rest', 'according to their due allotments means after giving a quarter share to the recoverer the remaining (¾) should be distributed by all along with him according to their shares 'In order' being meaningless in connec-

tion with 'recovery' and by reason of the unity of the sentence, he fills up the gap by 'in order' the first part of the verse, 'inherited '

Mitākṣra.

क्रमादभ्यागतमिति शेषः । ४ ॥

क्रमात् kramād, through succession , अभ्यागतम् abhyāgatam, come, inherited , इति iti , this , शेषः śeṣaḥ, remains, is understood

4 In regular succession] Here the word "inherited' must be understood.

Mitākṣrā

तथा विद्यया वेदाध्ययनेनाध्यापनेन वेदार्थव्याख्यानेन वा यल्लब्धं तदपि दायादेभ्यो न दद्यात् । अर्जक एव गृह्णीयात् । ५ ॥

तथा tathā, similarly , विद्यया vidyayā, by learning , वेदाध्ययनेन vedādhyayanena, by studying the Vedas , अध्यापनेन adhyāpanena, by teaching, वेदार्थ-व्याख्यानेन *vedārtha-vyākhyānena, by expounding the meaning of the* Vedas , वा vā, nor , यद् yad, whatever , लब्धम् labdham, obtained , तद् tad, that , अपि api, also, दायादेभ्य dāyādebhyaḥ, to the coheirs , न na, not , दद्यात् dedyāt, should give , अर्जकः arjakaḥ, acquirer , एव eva, only , गृह्णीयात् grihṇiyāt, should take

5. He need not give up to the co-heirs, what has been gained by him through science, by reading the Scriptures or by expounding their meaning ; the acquirer shall retain such gains.

Balambhatta's gloss

4 and 5 *He explains the forth quatrain , he explains 'similarly'* by connecting it with 'only' (eva) , by 'science alone' , by reason of the non absence of any proof and being in unison with the text of other smritis he gives its three meanings 'By reading the scripture' he means by reason of its being principal He gives the meaning , 'that also', this is the reading which is approved of This and others by the inherent force of the terms, viz 'father', 'himself' and 'kinsmen' etc , relate to the earning of one of the brothers in the complete partition , similarly the text of Narada relating to the (earnings by the) exploits should be understood Later on, the earnings made in this way will be, however, considered

Mitâksarâ

अत्र च पितृद्रव्याविरोधेन यत्किञ्चित्स्वयमर्जितमिति सर्वत्र शेषः । अतश्च पितृद्रव्याविरोधेन यन्मैत्रमर्जितं पितृद्रव्याविरोधेन यदौद्वाहिकं पितृद्रव्याविरोधेन यत्क्रमादायातमुद्धृतं पितृद्रव्याविरोधेन विद्यया लब्धमिति प्रत्येकमभिसम्बध्यते । तथा च पितृद्रव्यविरोधेन प्रत्युपकारेण यन्मैत्रम् । आसुरादि विवाहेषु यल्लब्धम् । तथा पितृद्रव्यव्ययेन यत्क्रमायातमुद्धृतं तथा पितृद्रव्यव्ययेन लब्धया विद्यया यल्लब्धं तत् सर्वं सर्वैर्भ्रातृभिः पित्रा च विभजनीयम् । ६ ॥

अत्र atra, here, च cha, and, पितृद्रव्याविरोधेन pitridravyâvirodhena, without detriment to the father's property, यत्किञ्चित् yatkinchit, whatever; स्वयम् svayam, by himself, अर्जितम् arjitam, acquired, इति iti, this, सर्वत्र sarvatra, everywhere, शेषः śeṣah, understood, अतः atah, hence, thus, च cha, and, पितृद्रव्याविरोधेन pitridravyâvirodhena, without detriment to, the paternal estate, यद् yad, whatever, मैत्रम् maitram, from a friend अर्जितम् arjitam, acquired, पितृद्रव्याविरोधेन pitridravyâvirodhena without, detriment to the paternal estate, यद् yad, whatever, औद्वाहिकम् audvâhikam, nuptial, पितृद्रव्याविरोधेन pitridravyâvirodhena, without any detriment to the paternal property, without the father's expenses यत् yat, whatever, क्रमाद् आयातम् kramâdâyâtam, inherited property, उद्धृतम् uddhritam recovered, पितृद्रव्याविरोधेन pitri dravyâ virodhena, without any detriment to the father's property, not by the father's expences विद्यया vidyayâ by learning, यद् yad, whatever, लब्धम् labdham, acquired इति iti, so प्रत्येकम् pratyekam, with each member of the sentence, अभिसम्बध्यते abhisambadhyate, is connected, तथा tathâ, similarly च cha, and, पितृद्रव्यविरोधेन pitri dravya virodhena, conferred at the charge of the patrimony, प्रत्युपकारेण pratyupakârena, as the return of an obligation, यद् yad, which; मैत्रम् maitram, obtained from a friend, आसुरादि विवाहेषु âsurâdi-vivâheṣu, in the marriage concluded in the form termed Âsura or the like, यद् yad, whatever, लब्धम् labdham, is obtained, तथा tathâ similarly, पितृद्रव्यव्ययेन pitri-dravya vyayena, by the expenditure of the father's goods, यत् yat, whatever, क्रमायातम् kramâyâtam, hereditary, उद्धृतम् uddhritam, recovered, तथा tathâ, similarly, पितृद्रव्य-व्ययेन pitri dravya vyayena, at the expense of the ancestral wealth, लब्धया विद्यया labdhayâ vidyayâ, by the learning gained by, यद् yad, whatever, लब्धम् labdham, obtained; तत् tat, that, सर्वम् sarvam, all, सर्वैः sarvaih, by all, भ्रातृभिः bhratribhih, brothers, पित्रा pitrâ, by the father, च cha, and, विभजनीयम् vibhajaniyam, should be divided

6 Here the phrase "any thing acquired by himself, without detriment to the father's estate", must be everywhere understood and it is thus connected with each member of the sentence; what is obtained from a friend, without detriment to the paternal estate, what is received in marriage, without waste of the patrimony what is redeemed, of the hereditary estate, without expenditure of ancestral property; what is gained by science without use of the father's goods Consequently, what is obtained from a friend, as the return of an obligation conferred at the charge of the patrimony, what is received at a marriage, concluded in the form termed Asura, or the like; what is recovered, of the hereditary estate, by the expenditure of the father's goods, what is earned by science, acquired at the expense of ancestral wealth; all that must be shared with the whole of the brethren and with the father.

Bâlambhatta's gloss

6 Though the said explanation devoid of adjectives or with all adjectives is common, yet he shows it in favour of his view with the object to bear on the subject 'Here and etc', 'here and' in the original text he gives another explanation Anything (kinchit) there is another reading 'only' (evam' or 'eva') The third is with a view to be in conformity with the text of Manu He means the remaining portion after differentiating all the properties obtained from a friend etc as laid down in the text by reason of their being not partible 'And therefore' he gives the result on its being understood everywhere 'consequently' the same is explained in an opposite way, or the return of the obligation caused at great hostility or to the detriment and consequently made In the Brâhma form of mariage there is no detriment to the patrimony under the text he therefore says '... from the Asura form of marriage', 'with the father', therefore they are mentioned divisible among all 'Must be shared'; therefore there is a relevancy of the subject of partition He clearly explains the meaning of the sentence, 'not similarly', but what is acquired without detriment to the partimony such as gift from a friend, etc is not partible

Mitâkṣrâ

तथा पितृद्रव्याविरोधेनेत्यस्य सर्वशेषत्वान्नैष पितृद्रव्याविरोधेन प्रतिग्रहलब्ध
मितिर्विभजनीयम् । अस्य च सर्वशेषत्वाभावे मैत्र मौद्वाहिकमित्यादिना लब्धत्यम् ।७॥

तथा tathâ, similarly, thus; पितृद्रव्याविरोधन pitṛi dravyâ-virodhena

without detriment to the father's estate, इति iti thus, अस्य asya, this (phrase), सर्वशेषत्वात् sarva śeṣatvât, because of its being understood every where अत्र atra, here, पितृद्रव्याविरोधेन pitr-dravya-virodhena without detriment to the father's estate, प्रतिग्रहलब्धम् pratigraha labdham obtained by simple acceptance, इति iti, so विभजनीयम् vibhajanîyam, should be divided, अस्य asya, this, च cha, and सर्वशेषत्वाभावे sarva śesatvâ-bhâve, if it were not understood with every member of the text; मैत्रम् maitram, present from a friend, औद्वाहिकम् audvâhikam a dowry received at a marriage, इत्यादिना ityâdinâ, by this and the like, लब्धव्यम् labdhavyayam, should be obtained

7. Thus since the phrase "without detriment to the father's estate" is in every place understood, what is obtained by simple acceptance, without waste of the patrimony, is liable to partition But, if that were not understood with every member of the text, presents from a friend, a dowry received at a marriage, and other particular acquisitions, need not have been specified.

Bâlambhatta's gloss

7 It is not only understood with every member of the text but it is understood with every thing declared impartible by ho texts of other smritis by reason of the implication of the gift from friends etc Similarly the gift from friends etc, are divisible, so are others also 'Patrimony', some (are of opinion) that it is also not (partible), in that case even on getting at the right principle as regards the gift from a friend etc and the things (declared impartible) under the other smritis by reason of the unsettled principle as regards the acquisition by acceptance (gift) it is difficult to determine the correct principle there it may be, therefore said, to be implied by it, he says, or on determination of the true principle in the case of the gift from a friend etc the same principle applies with equal force 'Patrimony', somewhere the reading is without 'not' it appears to be proper and in conformity with the mode of explanation by the commentator, there is no use in repeating the meaning of the sentence the fact that it is understood in the succeeding one only is not independent, 'but' (kincha) is with the object of that meaning; the purport is already given and it is proper

According to others the reading is 'not thus' (na tathâ) even then, it is understood in the succeeding clause; it means 'not independently' The meaning is just as by reason of detriment to the partimony' being understood everywhere and being understood at the end of friendly gift etc under the text the friendly gift etc obtained to the detriment of the patrimony is divisible, similarly the earnings from the acceptance of gift being other than friendly gift etc acquired at the expense of the patrimony, are

indivisible. What he means is that the fitness for divisibility arises from the earnings being made at the cost, though independently, by reason of that (to the deriment of the patrimony) being undestood. It is not so, by reason of its being in conflict with what follows in the book and by reason of its not keeping pace with the natural tenour thereof.

It is to avoid the defect of *iṣṭâpatti** on saying 'let it be so'; if it be said to be understood with it (every member of the text) there will be independence. He, therefore, says to strengthen the above said view for (fear of) the possibility of its being different from the friendly gift etc. under the maxim of 'Brâhmaṇa vasiṣtha'† On that being understood by reason of the inherent force of the word etc., whatever is earned without detriment to the patrimony is indivisible. Though it follows from the members of the sentence, yet generally like similar acquisition from the acceptance of gift, similar friendly gift etc. are proved to be indivisible; the enumeration of the same again, is useless: it is his meaning. It is not the subject of the maxim of 'Brâhmaṇa Vasiṣtha'; it comes into operation when there is a reason but the application is elsewhere. Here in the present case there is no difference of the subject (dealt with); otherwise he doubts the applicability.

Mitâkṣrâ.

अथ पितृद्रव्यविरोधेनापि यन्मैत्रादिलब्धं तस्याविभाज्यत्वान्मैत्रादिवचनमित्यर्थवदित्युच्यते । तथा सति समाचारविरोधः विद्यालब्धे नारदवचनविरोधश्च ॥ कुटुम्बं बिभृयाद्भ्रातुर्यो विद्यामधिगच्छतः । भागं विद्याधनात्तस्मात्स लभेताश्रुतोऽपि सन्निति तथा विद्याधनस्याविभाज्यस्य लक्षणमुक्तं कात्यायनेन । परभक्तोपयोगेन विद्या प्राप्तान्यतस्तु या । तया लब्धं धनं यत्तु विद्याप्राप्तं तदुच्यतइति । ८ ॥

अथ atha, now; पितृ-द्रव्य विरोधेन pitridravya,-virodhena, at the expense of the patrimony; अपि api, even; यद् yad, whatever; मैत्रादि maitrâdi, gifts from a friend and similar gifts; तस्य tasya, of that; अविभाज्यत्वात् avibhâjyatvât, owing to its not being liable to partition, owing to its being exempt from partition; मैत्रादिवचनम् maitrâdi-vachanam, mention of, or enumeration of a present from a friend and similar other gifts; इति iti, that; अर्थवद् arthavad, is pertinent; इति iti so; उच्यते uchyate, it is

* It is a party's statement which turns out favourable to the opposite side. It is like admission. See Vâchaspatya.

† ब्राह्मणपरिव्राजकन्याय The maxim of *the Brahmans and the mendicants.* In such a sentence as ब्राह्मणा भोजयितव्याः परिव्राजकाश्च, the separate mention of the latter, who are really included in the former term, merely emphasises their position as a special part of the general body. It is thus the exact parallel of the गोबलीवर्द न्याय and of the ब्राह्मणवसिष्ठ न्याय Jacob

alleged, तथासति tathâ sati, if that be the case, समाचार विरोध samâchâra virodhah, inconsistency with the received practice of unerring persons, विद्यालब्धे vidyâ labdhe, as regards what is obtained by learning or science, नारद वचनविरोधः Nârada-vachana virodhah, contradiction with a passage of Nârada, च cha, and, कुटुम्बम् kutumbam, the family, बिभृयात् bibhṛiyât, would maintain, भ्रातुः bhrâtuh, of a brother, यः yah, who विद्याम् vidyâm learning, अधिगच्छतः adhigachhatah, (of a brother) who is studying science acquiring learning, भागम् bhâgam a part विद्याधनात् vidyâ dhanât, of the wealth gained by science, सः sah, he, लभेत labheta would obtain, अश्रुतः asrutah, ignorant अपि api, even, though, सन् san, being, remaining, इति iti, so, तथा tathâ, similarly, विद्याधनस्य vidyâ dhanasya, of wealth earned by learning, अविभाज्यस्य avibhâjyasya, of what is not to be divided, लक्षणम् lakṣanam, the definition, उक्तम् uktam, is said, कात्यायनेन kâtyâyanena, by kâtyâyana, परभक्तोपयोगेन parabhakta upayogena, while receiving a foreign maintenance, विद्या vidyâ, science, learning, प्राप्ता prâptâ, acquired अन्यतः anyatah, acquired from a stranger, तु tu, but, या yâ, which, तया tayâ, by that, लब्धम् labdham, obtained, धनम् dhanam, wealth', यत् yat, which, तु tu, but, विद्या-प्राप्तम् vidyâ-prâptam, obtained by learning, तद् tad, that, उच्यते uchyate, is said, इति iti, so

8 But, it is alleged, the enumeration of amicable gifts and similar acquisitions is pertinent, as showing that such gains are exempt from partition, though obtained at the expense of the patrimony. Were it so, this would be inconsistent with the received practice of unerring persons, and would contradict a passage of Nârada "He, who maintains the family of a brother studying science, shall take, be he ever so ignorant, a share of the wealth gained by science." Moreover, the definition of wealth, not partible, which is gained by learning, is so propounded, by Kâtyayana. "Wealth, gained through science which was acquired from a stranger while receiving a foreign maintenance, is termed acquisition through learning."

Bâlambhatta's gloss

8 *'But']*, 'also' (api) is in the sense of inclusion of the preceding, 'exempt from partition', by being indivisible it is in the fifth form of declension in the sense of reason in the form of result It

means 'to support it'; the reading 'for exemption from partition (avibhajyatvāya)' does not require elucidation. 'Received practice of unerring persons' means 'not contrary to the practice sanctioned by the society of the educated people.'

When the usage (practice) is weak by reason of the text that sruti* etc are each stronger than the following ones, it is improper. The reply is in the negative by reason of not explaining the meaning. As for example, the annulment is an obstruction in the way; non-annulment is a preferable rule: under it a weak rule does not annul another weak (rule) but its operation comes into play when there is a conflict and no opportunity for its application. The conflict arises by two different rules at one place. But such is not the case here When there is accomplishment (of an object) by non-annulment, the annulment is not proper; under this rule, the text as regards a friendly gift should be interpreted in accordance with what we say: there is, therefore, no room for non-application. In this way under the rule 'to those who are afraid of meaninglessness', the annulment is unsuited; in short if the interpretation be accepted according to what I state, it offends the customery law observed by educated men,

Not only does it offend the rules of the society but the gains of science falling under the category of the friendly gift are against the smritis also. 'In the gains of science' means a share in them; he explains it. If the brother of one who is acquiring learning supports his family, though illiterate and ignorant, by being devoid of the Vedic learning, he gets a share in the earnings made with the learning acquired by him; there is another reading, 'asuta' (sonless in place of 'aśruta', illiterate) Here by stating the reason for sharing the earnings on supporting the family (of the acquirer), sharing of the gains of science is conditional but not natural by reason of being a brother. If the object of the original text is that the wealth in the shape of science acquired anyhow is in reality indivisible, it contravenes the condition attached by Nārada. It follows that the divisibility or indivisibility thereof is not natural; but it is indivisible if acquired without detriment to the patrimony and divisible when acquired to the detriment thereof. It is contradictory in form but in conclusion it is in conformity with the reason assigned by Nārada. In the original the 'pitri' (patrimony) is upalakṣana (synecdoche). If the object of Nārada is that the allotment of a share in the gains of science is natural, the condition attached thereto is meaningless. So the learning acquired in any way is not divisible in itself; otherwise on the indivisibility thereof depending on the acquisition without detriment to the patrimony, the indivisibility is proper i. e. the statement as to the division thereof is irrelevant.

By 'illiterate' it is implied that in the case of an illiterate man, there

* See the Purva Mimāṃsā p. 114 of Vol. XXVII and p. p. XVIII—XX of vol. XXVIII of S. B. H.

is allotment of a share, if it (learning) is acquired to the detriment of the patrimony, in the case of a literate man he is entitled to it by reason of possessing it and possessing learning Kâtyâyana therefore, says 'A man who is literate shall nowhere share the gains of science with the illiterate, but a literate man shall share them with those who are equally or more learned " *Vaidya* means literate it is an exception to the established truth arrived at as to indivisibility It will be clear later on By this, the foolish (Manda's) statement that there is a contradiction between Nârada and Kâtyâyana is refuted by reason of the definition of indivisibility given by Kâtyâyana and the subject (thereof) The commentator has also said to the same effect, otherwise the qualifying clauses have no bearing In the same way the commentators's conflict as to other than gains of science with Nârada etc, should be reconciled.

It lays down an extraordinary principle* in connection with the divided brother But there is a rule that the friendly gifts are always impartible and in the established truth the particulars have been specified as exceptions so there is no conflict 'Similarly learning'} 'foreign' means by eating the cooked rice etc of persons other than the father, foreign' other than the father so the earnings gained from learning acquired without detriment to the patrimony from a different person are gains of science, but not others and as such they are indivisible Any other acquisition is, therefore, not a gain of science and is divisible It means that the conflict by reason of the intention of Kâtyâyana with the meaning is obvious Therefore even without the conflict with Narada's text by the conflict with Katyayana's text, the impossibility of the meaning and the absence of sense on that (without detriment to the patrimony) being not understood, the defect of the meaninglessness is well established

Mitâkarâ

तथा पितृद्रव्याविरोधेनेत्यस्य भिन्नवाक्यत्वे प्रतिग्रहलब्धस्याविभाज्यत्वमाचारविरुद्धमापद्येत । ६ ॥

तथा tathâ, similarly, पितृद्रव्याविरोधेन pitri dravyâvirodhena, without detriment to the father's estate इति iti, so, अस्य asya, of this, भिन्नवाक्यत्वे bhinna vâkyatve, if it be a separate sentence, प्रतिग्रह लब्धस्य pratigraha-labdhasya, obtained by acceptance, अविभाज्यत्वम् avibhâjatvam, being exempt from partition, आचार-विरुद्धम् âchâra viruddham, contrary to established practice, आपद्येत âpadyet, would be

9. Thus if the phrase "without detriment to the father's estate", be taken as a separate sentence, any thing obtained by

* See at p XXI of vol XXVIII of S B H for its explanation

more acceptance would be exempt from partition, contrary to established practice.

Bâlambhattâ's gloss

9 He points out another defect, 'thus } 'acceptance', by reason of 'without detriment to the patrimony', any thing obtained without detriment to the patrimony under the previous rule as acceptance of gift made for invisible purpose, charity and donation, even if earned without any detriment to the patrimony, becomes impartible, this is contrary to the practice of the elders The friendly gifts, the subject of all smritis acquired with or without detriment to the patrimony, being twofold, the divisibility of the acceptance of gift (pure and simple) is, therefore, in conformity with the practice (custom) The substance is that there is nowhere prohibition laid down by the smritis as to this, like the earnings made by officiating as a priest or teaching

Mitâksrâ

एतदेव स्पष्टीकृतं मनुना। (अ० ९ श्लो० २०८) अनुपघ्नन् पितृद्रव्यं श्रमेण यदुपार्जयेत्। दायादेभ्यो न तद्दद्याद्विद्यया लब्धमेव चेति। १० ॥

एतद् etad, this, एव eva, very, indeed, स्पष्टीकृतम् spaṣṭi kritam, is made evident, मनुना manunâ, by Manu अनुपघ्नन् anupaghnan, without ruining, without using, पितृद्रव्यम् pitṛi dravyam, father's wealth, श्रमेण śramena, by his labour, यद् yad, whatever, उपार्जयेत् uparjayet, would earn, दायादेभ्यः dâyâdebhyah to the coparceners, न na, not, तद् tad, that, दद्यात् dadyât, should give, विद्यया vidyayâ, by means of learning, लब्धम् labdham, obtained, एव eva, indeed, च cha, and, इति iti, thus.

10 This (condition, that the acquisition be without detriment to the patrimony,) is made evident by Manu "What a brother has acquired by his labour, without using patrimony, he need not give up to the co-heirs, nor what has been gained by science".

Mitâksarâ

श्रमेण सेवया युद्धादिना। ११ ॥

श्रमेण śramena, by labour, सेवया sevayâ, by service, युद्धादिना yuddhâdinâ, by war and the like

11. By labour. By science, war, or the like

Bâlambhatta's gloss

10 and 11 'This'] means the friendly gift etc earned without any detriment to the patrimony, without injury' means 'without using' here the meaning of preceding part of the stanza is clear By change of declension in 'without injury', it comes to this that a person who does not use the patrimony in both the accumulations made by his learning and by other means mentioned previously shall not share them with his co sharers, from this, it follows that what is earned without detriment to the patrimony in the shape of loss of the father's money, by means of learning or labour is indivisible when such is the case with the wealth acquired by learning which falls under the category of the friendly gifts etc, *a fortiori* the same applies to the friendly gift by implication (upalaksana)

In Manu (IX 208) 'whatever is obtained by one's effort shall not be given without his will' The reading of the last part of the verse is to the effect that whatever is earned with labour being desirable as for example friendly gift, shall not be divisible among brothers if he (the acquirer) is unwilling to do so This reading of Medhatithi and Kalpataru is not proper by reason of giving rise to the defect of the conflict with many smritis 'labdam tanna', the later reading is still more improper or it may relate to the ancestral property Having thus stated the remainder of the brothers' shares 'without injury', as said, should be understood, 'etc' conveys agriculture etc.' By the two terms 'without detriment to the patrimony' etc, the earnings of a brother as the friendly gifts etc shall not be shared by others, for the word 'father' includes other co sharers This shows that they are not earnings of the father and others This practice (custom) is based on brotherly affection or personal skill, or seen elsewhere similarly, it is founded on it

In 'whatever is on the father' (IX 204) the meaning of Manu is this, From the text of Manu, 'he should protect the sons (of the father) like the father' IX 108, the younger brothers have a right in the property of the elder like that of the father and son with this difference that in the paternal property even the illiterate have a share therein but in the elder brother's acquisition, only the literate brothers are entitled to it It appears so from the phrases such as 'on the death of the father' 'elder brother', 'of the younger brothers', and 'protectors of learnings', (IX. 204) It is, therefore, refuted that whatever earned jointly becomes the property of those who are other than joint (i e separate) as said previously, by reason of the uselessness of 'whatever'.

Mitâkṣarâ

ननु पितृद्रव्याविरोधेन यन्मैत्रादिलब्धं द्रव्यं तदविभाज्यमिति न वक्तव्यम्। विभागप्राप्त्यभावात्। यत्नेन लब्धं तत्तस्यैव नान्यस्येति प्रसिद्धतरम्। मासिपूर्वं कम प्रतिषेधः १२॥

ननु nanu, not indeed, is it not, पितृद्रव्याविरोधेन pitṛi dravyāvirodhena, without detriment to the father's property; यद् yad, what; मैत्रादिलब्धम् maitrâdi-laddham, obtained as a present from a friend, and similar presents; द्रव्यम् dravyam, wealth; तद् tad that, अविभाज्यम् avibhâjyam; should not be divided; इति iti, so; न वक्तव्यम् na vaktavyam, it should not be said; विभाग-प्राप्ति-अभावात् vibhâga prâpti-abhâvât, since there is no ground for the supposition of a partition; यद् yad, which; येन yena, by whom, लब्धम् labdham, acquired, तद् tat, that; तस्य tasya, belongs to that person (the acquirer); एव eva, indeed, only; न na, not; अन्यस्य anyasya, of any other person; इति iti, so, this; प्रसिद्धतरम् prasiddha-taram, well-known; प्राप्ति-पूर्वकः prâptipûrvakaḥ implying the possible supposition of the contrary, च cha, and, प्रतिषेधः pratiṣedhaḥ, the denial.

12 Is it not unnecessary to declare that effects obtained as presents from friends, and other similar acquisitions made without using the patrimony, are exempt from partition: since there was no ground for supposing a partition of them? That what is acquired, belongs to the acquirer, and to no other person, is well known: *but a denial implies the possible supposition of the contrary.*

Bâlambhatta' gloss

12 No, it is not proper; in the ancestral and paternal property on the son's having a proprietary right from the birth and on his having no such right in the earnings of his brother, it is common-place knowledge that whatever a brother gets as a friendly gift etc. is his (earning), does not *form part of the partible property* and *is not divisible*. He, therefore, says with a view to show the irrelevancy of the prohibition relating to it "Is......patrimony"]; he gives a reason for the absence of a rule (for partition); 'that', because etc: the meaning is that there is no proprietary right (in the earning) of another. He assigns another reason for the absence of the rule; 'having', 'and' (cha) is in the sense of 'because.'

Mitâkṣarâ

अत्र कश्चिदित्थं परिहारमाह। यत्किञ्चित्पितरि प्रेते धनं ज्येष्ठोऽधिगच्छति। भागो यवीयसां तत्र यदि विद्यानुपालिनः इति ज्येष्ठस्य कनिष्ठो वा मध्यमो वा पितरि प्रेते अप्रेते वा यवीयसां वर्षीयसां चेति व्याख्यानेन पितरि सत्यसति च मैत्रादीनां विभाज्यत्वं प्राप्तं प्रतिषिध्यते इति १३॥

अत्र atra, here , कश्चित् kaśchit, some body , इत्थम् ittham, thus , प्राप्तिम् prâptim, grounds for supposing a partition , आह âha, states ; यत्किञ्चित् yat kiñchit, whatever , पितरि pitari, if the father ; प्रेते prete, be dead , धनम् dhanam, wealth , ज्येष्ठः jyeṣṭhah, the eldest , अधिगच्छति adhi gachchati, obtains , भाग bhagâh, a share , यवीयसाम् yavîyasâm, of the younger ones , तत्र tatra, there , यदि yadi, if , विद्यानुपालिन vidyânupâlinah, such as have duly cultivated science , इति iti, so , ज्येष्ठः jyeṣṭhah, the eldest , वा vâ, or , कनिष्ठ kaniṣṭhah, the youngest , वा vâ, or , मध्यमः madhyamah, the middle one , वा vâ, or , पितरिप्रेते अप्रेतेवा pitari prete aprete vâ, whether the father be dead or not dead , यवीयसाम् yavîyasâm, of the younger ones , वर्षीयसाम् varsîyasâm, of the elder ones , च cha, and , इति iti, so , व्याख्यानेन vyâkhyânena, by explanation, by *interpreting* , पितरि सतिअसति *pitari sati asati whether the father* be alive or not, च cha, and , मैत्रादीनाम् maitradinâm , of the persent *from* a friend and similar other presents , विभाज्यत्वम् vibhâjyatvam, being liable to partition , प्राप्तम् prâptam, being supposed , प्रतिषिध्यते pratiṣidhyate, is denied , इति iti, so.

13. Here a certain writer thus states grounds for supposing a partition. By interpreting the text, "After the death of the father, if the eldest brother, acquire any wealth, a share of that belongs to the younger brothers provided they have duly cultivated science" , in this manner, if the eldest, youngest, or middlemost, acquire property before or after the death of the father ,a share *shall accrue to the rest, whether younger or older* , *grounds* do exist for supposing friendly presents and the like to be liable to partition, whether or not the father be living that is accordingly denied.

Bâlambhatta's glose

13 In order to find fault with the view of one who holds that even the affectionate gifts etc are partible, he gives his view 'Here some one'], he cites the text of Manu which favours partition , 'whatever'] , 'acquire' obtain , 'there', in the wealth , 'provided] if youngest , 'cultivated science' means 'patron of learning or learned men' , there is another reading 'follower of learning' From the fourth quatrain it follows that if they are illiterate, they earnings shall then be not divided.

So says *Goutama (XXV III-28)* "A literate shall not share his earnings with the illiterate (brothers) willingly." Nârada also says

"A literate person shall not allot a share of his wealth willingly to the illiterate (brothers) provided he has acquired it without using the paternal money".

Kâtyayâna has already been cited. By explaining this text, he says that they all point to the divisibility of the friendly gifts etc; 'or the eldest'] ; the term 'eldest 'includes all the three; the term 'youngest' includes all the elder brothers. 'After the death' [even before the death, so two periods are fixed. If any brother other than the eldest obtains wealth anyhow, he shall have to allot a share *therefrom* to other brothers either before or after the father's death provided they are literate ; in this sense, the friendly gifts etc. are, of course, divisible. (This rule) is prohibited by 'the paternal money' (the last proviso).

Mitâkṣarâ

तदसत् । न ह्यत्र प्राप्तस्य प्रतिषेधः । किंतु सिद्धस्यानुवादोऽयम् । लोकसिद्धस्यैवानुवादकान्येव प्रायेणास्मिन्प्रकरणे वचनानि १४ ॥

तद् tad, that ; असत् asat, is erroneous ; न na, there is not ; हि hi, since ; अत्र atra, here ; प्राप्तस्य prâptasya, of what might be supposed , प्रतिषेधः pratiṣedhaḥ, denial ; किंतु kintu, but ; सिद्धस्य siddhasya, of what is demonstratively true ; अनुवादः anuvâdaḥ, recital ; अयम् ayam, this ; लोकसिद्धस्य loka-siddhasya, of what is notorious to the world ; एव eva, only, indeed; अनुवादकानि anuvâdakâni, recitals ; एव eva, indeed ; प्रायेण prâyeṇa for the most part ; अस्मिन् asmin, in this ; प्रकरणे prakaraṇe, section, under (this) head.

14. The argument is erroneous ; since there is not here, a denial of what might be supposed ; but the text is a recital of that which was demostratively true : for most texts, cited under this head, are mere recitals of that which is not notorious to the world.

Bâlambhatta's gloss.

14. The original is an exception to the impartibility of the friendly gifts etc established from the old custom but not in the nature of prohibition, so that there may be a necessity of the rule Keeping this purport in view, he by removing the doubt refutes that view. 'The argument is erroneous,'] 'here' in the matter of the affectionate gift, it means not only here but elsewhere also, by the first 'eva' (only) the distinction is made with the rule of the Scripture and by the second 'eva' (only), the distinction is made with the prohibition. He says with a view to state otherwise some where ; 'generally'.

Mitâkshrâ

अथवा समवेतैस्तु यत्प्राप्तं सर्वे तत्र समांशिन इति प्राप्तस्यापवाद इति सन्तुष्यतु भवान्। अतश्च यत्किञ्चित्पितरि प्रेते इत्यस्मिन्वचने ज्येष्ठादिपदाविवक्षया प्राप्तिरिति व्यामोहमात्रं अतो मैत्रादिवचनैः पितुः प्रागूर्ध्वं वा विभाज्यत्वेनोक्तस्य यत्किञ्चित्पितरि प्रेते इत्यस्यापवाद इति व्याख्येयम् १५ ॥

अथवा athavâ, or , समवेतैः samavetaih, in concert , तु tu, but , यत् yat, what, प्राप्तम् prâptam, acquired सर्वे sarve, all , तत्र tatra, in that acquisition, समांशिनः samâmśinah, partakers of equal shares , इति iti, so, thus , प्राप्तस्य prâptasya, to what is suggested , अपवादः apavâdah, an exception , अयम् ayam, this , इति iti, so considering , considering it as , सन्तुष्यतु santusyatu, may be satisfied , भवान् bhavân, you अतः atah, hence , च cha, and यत्किञ्चित् yat kinchit, whatever , पितरि प्रेते pitari prete, when the father is dead ; इति iti, so , अस्मिन् asmin, in this , वचने vachane, passage , ज्येष्ठादि-पदाविवक्षया jyeṣṭhâdipadâvivakṣayâ, from an indefinite import of the word 'eldest', प्राप्तिः praptih, to deduce the suggestion , इति iti, this , व्यामोह-मात्रम् vyâmoha mâtram, a mere error, अतः atah therefore , मैत्रादिवचनैः maitrâdi vachanaih, from texts concerning friendly gifts and the rest , पितुःप्रागूर्ध्वम् pituhprâgûrdhvam before (or after the father (i e his death) विभाज्यत्वेन vibhâjyatvena, as being liable to partition , उक्तस्य uktasya, of what is spoken ; यत्किञ्चित् yatkiñchit, whatever , पितरिप्रेते pitari prete, when the father is dead , इति iti, this , अस्य asya, to this , अपवादः apavâdah, an exception , इति iti, so , व्याख्येयम् vyâkhyeyam, should be interpreted

15 Or you may be satisfied with considering it as an exception to what is suggested by another passage, "All the brethren shall be equal sharers of that which is acquired by them in concert" and it is therefore, a mere error to deduce the suggestion from an indefinite import of the word "eldest" in the text before cited (§13) That passage must be interpreted as an exception to the general doctrine, deduced from texts concerning friendly gifts and the rest, that they are exempt from partition, both before the father's death and after his demise

Bâlambhatta s gloss 9323

15 Let it be a prohibition , the same result is obtained from other

texts (also), but not by the above said mode (alone) :he says so on the authority of the maxim of 'तुष्यतु दुर्जनः' (let a wicked man be satisfied)*. 'Or']; he cites a text from Brihaspati ; 'by all in concert', it is plural to include all. He, therefore, says, 'all'; 'there', in the wealth; here is also no proof ; so he says, 'therefore' by reason of the result arising from thy (opponent's) obstinacy. 'Eldest etc-' ; he means as there is no reason for inappropriateness the authority (proof) is clear. He says *the same, 'error';* what will be the result of the established principle; so he says; 'therefore' means by reason of the possibility of thy (opponent's) above-said meaning. 'Of the father', death is understood ; it is to distinguish it from indivisibility ; 'of the above cited', of the affectionate gift ; by 'iti' is meant 'by this'. On the death of the father, the younger brothers get shares in the *earnings made by the older brother from the friendly gifts etc. provided they are literate; it is what he means* So if the elder brother earns wealth by learning etc. acquired without detriment to the patrimony, the younger brothers get shares therein provided they are engaged in acquiring knowledge; so say Kalpataru and Medhatithi. So also it should be understood to be an exception to the above said-rule laid down by Kâtyâyana.

Mitâkṣarâ.

तथान्यदप्यविभाज्यमुक्तं मनुना । (अ.९ श्लो.२१९) वस्त्रं पत्रमलङ्कारं कृतान्नमुदकं स्त्रियः । योगक्षेमं प्रचारं च न विभाज्यं प्रचक्षते इति॥१६॥

तथा tathâ, similarly ; अन्यद् anyad , other things ; अपि api, also ; अविभाज्यम् avibhâjyam, exempt from partition ; उक्तम् uktam, is said, मनुना manunâ, by Manu ; वस्त्रम् vastram, *clothes* ; पत्रम् patram, *vehicles* अलङ्कारम् alaṅkâram, ornaments ; कृतान्नम् kritannam, prepared food ; उदकम् udakam, water, स्त्रियः striyaḥ, women ; योग-क्षेमम् yogakṣemam, sacrifices, and pious acts ; प्रचारम् prachâram, a common way ; न na, not; विभाज्यम् vibhâjyam, to be divided ; प्रचक्षते prachakṣate, they say, are declared.

16. Other things exempt from partition, have been enumerated by Manu, "Clothes, vehicles, ornaments, prepared food, women, sacrifices and pious acts, as well as the common way, are declared not liable to distribution.

* The maxim is used where even on admitting the untenable position of an opponent, another defect can not be cured.

Bâlambhatta's gloss

16. He sets aside the deficiency, 'other things'] there is another wrong reading '*atha anyat*', by 'also' (api) 'Wealth acquired by one becomes his own self acquisition, similarly, gifts made to a friend, a bride-groom, or a guest. This is the substance, what is obtained by a guest out of respect. 'Are declared] 'books', the reading according to Yama (Manda) by reason of the approval by the commentators, Kalpataru and Medhâtithi etc. is to be disregarded.

Mitâkṣrâ

धृतानामेव वस्त्राणामविभाज्यत्वं यद्येन धृतं तत्तस्यैव। पितृधृतानि तु पितुरूर्ध्वं विभजतां श्राद्धभोक्त्रे दातव्यानि। यथाह बृहस्पतिः। वस्त्रालङ्कारशय्यादि पितुर्यद्वाहनादिकम्। गन्धमाल्यैः समभ्यर्च्य श्राद्धभोक्त्रे समर्पयेदिति। अभिनवानि तु वस्त्राणि विभाज्यान्येव १८ ॥

धृतानाम् dhṛitânâm, of those that are used or worn, एव eva, only, indeed, वस्त्राणाम् vastrâṇâm, of clothes, अविभाज्यत्वम् avibhâjyatvam being not distributed, यद् yad, which, येन yena, by whom, धृतम् dhṛitam, worn, तद् tad, that, तस्य tasya, belongs to the same one, एव eva, the very, the same, पितृधृतानि pitṛidhṛitâni, those that had been worn by the father, तु tu, but, पितुरूर्ध्वं pituḥ ûrdhvam, after the father, विभजताम् vibhajatâm, by brethren parting; श्राद्धभोक्त्रे srâddha bhoktre, to the person who partakes of the food at the obsequies, दातव्यानि dâtavyâni, should be given, यथा yathâ, as, आह âha, directs, बृहस्पतिः brihaspatiḥ, Brishaspati, वस्त्रालङ्कारशय्यादि vastrâlankâra śayyâdi, clothes, ornaments, bed and other articles, पितुः pituh, the father's, यद् yad, which, वाहनादिकम् vâhanâdikam, vehicle and the like, गन्धमाल्यैः gandha mâlyaih, with fragrant drugs and wreaths of flowers समभ्यर्च्य samabhyarchya, after worshipping them, perfuming them श्राद्धभोक्त्रे śrâddhabhoktre, to the person partaking of the food at the obsequies (of the funeral repasts), समर्पयेत् samarpayet, should give, इति iti, so, अभिनवानि abhinavâni, new, तु tu, but, वस्त्राणि vastrâni, clothes, विभाज्यानि vibhâjyâni, are subject to distribution, एव eva, indeed.

17. Clothes, which have been worn, must not be divided. What is used by each person, belongs exclusively to him; and what had been worn by the father, must be given by brethren parting after the father's decease, to the person who partakes of food at his obsequies as directed by Brashaspati, "The clothes and ornaments, the bed and similer furniture, appertaining to the

father, as well as his vehicle and the like, should be given, after perfuming them with fragrant drugs and wreaths of flowers, to the person who partakes of the funeral repast " But new clothes are subject to distribution.

Bâlambhatta's gloss

17 He explains 'clothes' etc in order, 'which have been worn' etc] in the original text, the singular is used to indicate the same species, by this, the unity of clothes, vehicle, water is meant, the clothes should be of equal price not very precious, it refutes the view of Medhatithi and Kalpataru by reason of the qualifying clause to the object in view 'Worn clothes and ornaments' from Kâtyâyana makes it common to both With this object in view, he says, 'of the worn only' by this a distinction is made with the unworn It is in connection with the sons; 'what'; it is also well known, He says in connection with the father, 'father', after father's death, 'after', by this, it is suggested that if partition took place during his life time, the father shall take them as his share 'Parting', under 'optionally of the कृत in the nominative'* (Panini II-3 71) is in the genitive case in the nominative sense That etc of the father' is connected with 'all that', 'etc' includes other paraphernalia It is the right of the person who partakes of the funeral repast in the worship 'The priest who partakes of the funeral repast' is in singular by reason of its applying to a class, it applies to the whole priestly class as represented by him He gives the result of the explanation, 'new'

Mitâksrâ

पत्र वाहनमश्वशिबिकादि तदपि येनारूढं तत्तस्यैव पित्र्यं तु वस्त्रवदेव। अश्वादीनां बहुत्वे तु तद्विक्रयोपजीविना विभाज्यत्वमेव। वैषम्येण विभाज्यत्वे ज्येष्ठस्य (अ० ९ श्लो० ११९) अजाविकं सैकशफं न जातु विषमं भजेत्। अजाविकं सैकशफं ज्येष्ठस्यैव विधीयते इति मनुस्मरणात्। १८ ॥

पत्रम् patram, vehicles (patram, means), वाहनम् vâhanam, vehicles; अश्वशिबिकादि asva sibikâdi, horses, litters etc, तद् tad, that, अपि api, too, यद् yad, which, येन yena, by whom, आरूढम् ârûdham, ridden, तत् tat, that; तस्य tasya, his, एव eva, only, indeed; पित्र्यम् pitryam, the father's, तु tu but, वस्त्रवद् vastravad, like clothes, एव eva, indeed; अश्वादीनाम् asvâdinâm, of horses and others, बहुत्वे bahutve, if these be

*See for explanation in Panini at p 305 of the Panini publication.

a number, तु tu, but तद्विक्रयोपजीविनाम् tad vikraya upajivinâm, among those who live by the sale of them विभज्यत्वम् vibhâjyatvam, liability of being distributed, एव eva, indeed वैषम्येण vaiṣamyeṇa, owing to inequality, the member being unequal, विभाज्यत्वे vibhâjyatve, in being distributed, ज्येष्ठस्य jyeṣṭhasya, belong to the eldest, अजाविकम् ajâvikam, a single goat, a single sheep, सैकशफम् saikaśapham, with a whole hoof, or with a uncloven hoof, न na, not, जातु jâtu, indeed never, विषमम् visamam, an unequal, a single one भजेत् bhajet, should divide, अजाविकम् ajâvikam, a goat or a sheep, सैकशफम् saikaśapham, an uncloven beast with a whole hoof, ज्येष्ठस्य jyeṣṭhasya, belong to the eldest, विधीयते vidhiyate it is prescribed that, इति iti, thus, मनुस्मरणात् manu smaranât, because Manu has ordained

18. Vehicles] The carriages, as horses, litters, or the like Here also, that, on which each person rides, belongs exclusively to him. But the father's must be disposed of as directed in regard to his clothes. If the horses or the like be numerous, they must be distributed among co-heirs who live by the sale of them. If they cannot be divided, the number being unequal, they belong to the oldest brother, as ordained by Manu. "let them never divide a goat or sheep, or a single beast with uncloven hoofs a single goat or sheep belongs to the first-born."

Bâlambhatta's gloss

18 The synonyms of 'patra' (vehicle) are वाहन, यान, युग्य, पत्र, धोरण according Amara Sinha (II 8 58), similarly *patra* means both conveyance and leaf (Amar III 3 179), he supports it by quoting from the dictionary 'Carriage'], 'or the like, conveyances etc like the clothes should be given to 'the priest who partakes of the funeral repast' He gives a specical case, 'of the horses', animals it is in the 6th form of declension in the sense of the nominative case as before, when they are many, they should be distributed amongst them all Of the first born] t means that it falls to him as his share, here the unequal share is to make up the entirety but not for the unevenness Thus by giving one to him if the number is even, in order to make up the total of the shares they should be so allotted by them When there is an odd number by reason of the indivisibility thereof equably among all and by being not capable of conversion into money on account of the prohibition of sale, the shares should be

equally made and that which is over and above there in the shape of a horse etc., should be allotted to the eldest alone. If that is not practicable, the whole should go to the eldest. For example, the horses are four but the sons are three or five; In this case there is a glaring disparity He means that if it be accepted, there will be a conflict with the texts of many smritis, the same rule applies elsewhere He cites an authority in support of indivisibility. 'A goat or a sheep'] It is *dwanda* compound to indicate 'a single of it', 'divide' allot; he assigns a reason: a goat'], therefore etc. 'Patra' means any money entered in a document; "money entered in a deed and set apart for a charitable purpose, water, females and heriditary corrody." Kātyāyana.

'Let him disclose the (assets) after the sale of clothes and ornaments and payment of documentary debts and conversion of the prepared food into the unprepared'-Kalptaru citing from Brihaspati's smriti.

Mitākṣra.

अलङ्कारोऽपि योयेन धृतः स तस्यैव। अधृतः साधारणोविभाज्यएव। (मनु० अ० ९ श्लो० २००) पत्यौ जीवति यः स्त्रीभिरलङ्कारोधृतो भवेत्। न तं भजेरन्दायादा भजमानाः पतन्ति तइति॥ अलङ्कारोधृतोभवेदिति विशेषणोपादानादधृतानां विभाज्यत्वं गम्यते। १९॥

अलङ्कारः alankārah, ornaments; अपि api, too, यः yah, which; येन yena, by whom, धृतः dhritah, was worn; सः sah, that; तस्य tasya, his; एव eva, indeed; अधृतः adhritah, which is not used, not worn; साधारणः sādhāranah, is common; विभाज्य एव vibhājyah eva, must be divided; पत्यौजीवति patyau jivati, while the husband is living; यः yah, which; स्त्रीभिः stribhih, by women or wives; अलङ्कारः alankārah, ornaments; धृतः dhritah, used; भवेत bhavet, would be; न na, not; तम् tam, that; भजेरन् bhajeran, should divide; दायादाः dāyadāh, heirs; भजमानाः bhajamānāh if they divide, पतन्ति patanti, they fall, are degraded from their tribe; इति iti, so, अलङ्कार alankārah, an ornament; धृतः dhritah; worn, used; भवेत bhavet, if it would be; इति iti, so, thus, विशेषणोपादानात् viśesana-upādānât, by the use of this epithet, by the condition specified; अधृतानाम् adhritānām, those that are unused, विभाज्यत्वम् vibhājyatvam, liability of being divided, गम्यते gamyate, is seen.

19. The ornaments worn by each person are exclusively his. But what has not been used, is common and liable to partition. "Such

ornaments, as are worn by women during the life of their husband, the heirs of the husband shall not divide among themselves ; they, who do so, are degraded from their tribe' It appears from the condition here specified ("such ornaments as are worn') that those, which are not worn, may be divided.

Bâlambhatta's gloss.

10 In the original it is, as usual, in neuter, he says with an object, 'ornament'] 'worn'], here everywhere 'bhrita etc.' is another reading, the meaning is the same 'The unworn' is explained, 'is divisible'] *vibhajya* is an incorrect reading, although under "यत्, ईयसुन् in comparison of two and division" (P V 3 57),* by *nipâta* it is correct only in the ablative case, but nowhere else It may be asked similarly by dropping यत् obtained under "generally कृत and ण्वुल् affixes" (P III-3-113)† how can *bibhajya* be formed? The reply is that it is correct by reason of its ending in a vowel under 'after vowel, यत्' (P III 1 97)‡ There is no difference of meaning by reason of laying down the prohibited, a root form of the verb is made causative, so under 'If a root ending in णि in the state devoid of णि being accusative, becomes nominative in the sense of non meditation' (I 3 67)§ (it is proper) by reason of the support given by Hâ ita But *nipâtas* and other obstructions are not proper by reason of 'kn being unavoidable in 'nyat' and the absence of the support thereof By this, the statement of Haridatta to the effect that the correct use of the term of 'vibhâjya in the *smriti* is doubtful, is refuted

He cites Manu, 'in the husband' and by the women' are figures of synechdoche, therefore '..each person, is exclusively his' should be understood not against the preceding part of the book 'iti' means '..here', there is an authority for the special rule, 'ornament'], by this 'worn and similarly situated at the time of partition should not be allotted to shares to the sons', but she should put it on as a share of her husband It the follows as a matter of invisible inference that what a wife has put on during the life time of her husband, shall be indivisible after his death

* See for further elucidation at P 961 of vol I of Panini
† See at P. 524 Ibid
‡ See at P 385 Ibid,
§ See at P P 149 of vol I of Pânini

By this, the indivisibility thereof for all times is refuted, there is on the other hand degradation on appropriating it out of avarice for its beauty. By saying 'while living' there is nothing wrong in appropriation after death by another ; the statement of Yama is set aside.

Mitâkṣrâ.

कृतान्नं तण्डुलमोदकादि तदप्यविभाज्यं यथासंभवं भोक्तव्यम् । २० ॥

कृतान्नम् kritânnam, prepared food ; तण्डुल taṇḍula, boiled rice ; मोदकादि modakâdi, sweetmeats etc ; तद् tad, that ; अपि api, too ; अविभाज्यम् avibhâjyam, not to be divided ; यथासम्भवम् yathâ sambbavam, according to circumstances ; भोक्तव्यम् bhoktavyam, is to be used, consumed.

20. Prepared food, as boiled rice, sweet cakes, and the like, must be similarly exempted from partition. Such food is to be consumed according to circumstances.

Bâlambhaṭṭa's gloss.

20 'Prepared food', here is no karmadhâraya by reason of the word 'krita' being useless, but it means 'made from eatable stuff' like 'râjadanta etc.' The word "anna" (eatable), is a compound word and means anything fit for it. 'Boiled rice and sweet cakes' mean the sweetmeat balls made thereof, 'and the like', cakes etc. ; 'according', but etc, similarly in the following.

उदकं तूदकाधारः कूपादि. तच्च विषमं मूल्यद्वारेण न विभाज्यं पर्यायेणोपभोक्तव्यम् । २१ ॥

उदकम् udakam, water ; तु tu but ; उदकाधारः udakâdhâraḥ a reservoir of water, कूपादि kûpâdiḥ, wells etc., तच्च tachcha, and that, विषमम् viṣamam, unequal, (to the allotment of shares), मूल्यद्वारेण mûlya-dvârena, by means of the value ; पर्यायेण paryâyena by turns ; उपभोक्तव्यम् upabhoktavyam, should be used.

21. Water, or a reservoir of it, as a well or the like, being unequal (to the allotment of shares,) must not be distributed by means of the value, but is to be used (by the co-heirs) by turns.

Bâlambhaṭṭa's gloss.

21 'Unequal'] by this, the division is suggested in equal allotment,

similarly in the following also for the said reason, he, lays down the mode of use, 'value' similarly in the following also

Mitâkarâ

स्त्रियश्च दास्यो विषमा न मूल्यद्वारेण विभाज्याः पर्यायेण कर्म कारयितव्याः। अवरुद्धास्तु पित्रा स्वैरिण्याद्याः समा अपि पुत्रैर्न विभाज्याः। 'स्त्रीषु च संयुक्तास्वविभाग' इति गौतमस्मरणात्। २२ ॥

स्त्रियः striyah women, च cha, and, दास्यः dâsyah, women slaves; विषमाः visamâh, unequal (to the number of shares) न na, not, मूल्यद्वारेण mulya dvârena, by means of value, विभाज्याः vibhâjyâh, should not be distributed, पर्यायेण paryâyena, in turns कर्म karma, work कारयितव्याः kârayitavyâh, should be made to work, अवरुद्धाः avaruddhâh, kept in concubinage, तु tu, but, पित्रा pitrâ, by the father, स्वैरिण्याद्याः svairinyâdyâh, adultresses and others, समाः samâh, equal (to the shares), अपि api, even though, पुत्रैः putraih, by the sons, न na, not, विभाज्याः vibhâjyâh, be divided, स्त्रीषु strisu in the case of women, संयुक्तासु samyuktâsu, that were connected, अविभागः avibhâgah, no partition, इति iti, so, गौतमस्मरणात् gautamasmaranât, because of the text of Gautama

22 The women or female slaves, being unequal (in number, to the shares) must not be divided by the value, but should be employed in labour (for the co-heirs) alternately But women (adultresses or others) kept in concubinage by the father, must not be shared by the sons, though equal in number. for the text of Gautama forbids it "No partition is allowed in the case of women connected (with the father or with one of the co heirs)"

Bâlambhatta's gloss

22 By reason of mentioning 'slaves' out of fitness, he states a special rule suggesting the result 'Women kept in concubinage' means kept by the father, he defines them, 'adultresses', by 'api' the unequal is also included He gives an authority in support of even their equal number 'Women connected' means 'enjoyed' or 'kept', similarly the other reading, it means that they should be maintained like mothers By the prohibition of the divisibility of the kept women; the married females are *a fortiori* excluded, by this, the description thereof like the female slaves given by Yama etc and the application of it to others according to others are set aside, because both are included by reason of ample authorities It is (a rule) of equal application

Mitâkṣrâ.

योगश्च क्षेमश्च योगक्षेमम् । योगशब्देनालब्धलाभकारणं श्रौतस्मार्ताग्निसाध्यमिष्टं कर्म लक्ष्यते । क्षेमशब्देन च लब्धपरिरक्षणहेतुभूतं बहिर्वेदिदानतडागारामनिर्माणादि पूर्तं कर्म लक्ष्यते । तदुभयं पैतृकमपि पितृद्रव्यविरोधार्जितमप्यविभाज्यम् । यथाह लौगाक्षिः । क्षेमं पूर्तं योगमिष्टमित्याहुस्तत्त्वदर्शिनः । अविभाज्ये च ते प्रोक्ते शयनासनमेव चेति ॥ २३ ॥

योगः yogaḥ, yoga, च cha, and; क्षेमः kṣemaḥ, kṣema; योगक्षेमम् yoga kṣemam, the conjunctive word yoga kṣemam, योगशब्देन yoga śabdena, by the word yoga; अलब्ध-लाभ-कारणम् alabdha lâbha kâraṇam, the cause of obtaining something not already obtained श्रौत स्मार्ताग्निसाध्यम् śrauta smârta agni-sâdhyam, to be performed with fire consecrated according to *the Vedas and the law*; इष्टम् *iṣṭam, sacrificial*, कर्म *karma, act*; लक्ष्यते lakṣyate, is denoted; क्षेमशब्देन kṣema śabdena, by the word kṣema, लब्ध-परिरक्षण हेतुभूतम् labdha-parirakṣṇa hetubhûtam, which becomes the means of conservation of what has been obtained, बहिर्वेदिदान bahirvede-dâna, giving of alms elsewhere than the altar; तडागारामनिर्माणादि tadâgârâmanirmâṇâdi, the making of a pool or a garden or the like; पूर्तम् pûrtam, auspicious, कर्म karma, acts, लक्ष्यते *lakṣyate*, is denoted; तदुभयम् tad-ubhayam, *both those*; पैतृकम् *paitṛkam, appertaining to the father*; अपि *api*, though; पितृद्रव्यविरोधार्जितम् *pitṛi-dravya-virodh ârjitam, accomplished at the charge of the patrimony*; अपि api, though; अविभाज्यम् avibhâjyam, must not be distributed; यथा yathâ, as; आह âha, declares; लौगाक्षिः laugâkṣiḥ, Laugâkṣi क्षेमम् kṣemam, kṣemam; पूर्तम् pûrtam, conservatory; योगम् yogam, yoga; इष्टम् iṣṭam, sacrificial; इति iti; so, आहुः âhuḥ, have named; तत्त्वदर्शिनः tatva-darśinaḥ, the learned, the philosophers, the knowers of truth; अविभाज्ये *avibhâjye, indivisible*; च cha, and; ते te, they both, प्रोक्ते *prokte, are pronounced*, शयनासनम् śayanâsnam, bed and chair; एव eva, also, च cha, and.

23. The term *yoga kṣema* is a conjunctive compound resolvable into *yoga* and *kṣema* By the word *yoga* is *signified* a cause of *obtaining something not already obtained: that is,* a sacrificial act to be *performed* with fire, consecrated according to the Veda and the law. By the term *kṣema* is denoted an auspicious act which becomes the means of conservation of what has been obtained; such as the making of a pool or a garden, or the giving of alms elsewhere than at the altar. Both these,

though appertaining to the father, or though accomplished at the charge of the patrimony are indivisible, as Laugakṣi declares, "The learned, have named a conservatory act *kṣema* and a sacrificial one *yoga*, both are pronounced indivisible and so are the bed and the chair."

Bâlambhatta's gloss

23 'Kṣema'], the word 'kṣema' is non feminine according to Amara (1 4 26) It is a *dwanda* compound to indicate collection sacrificial acts ('iṣtam') of that name digging of tank (pûrtam) of that name, they are mentioned generally 'Appertaining to the father] by *api*, the ancestral is also included he says generally by reason of its being understood also with the other not understood 'At the charge of the patrimony' under 'api (though) without detriment to the patrimony' is included There is an authority in support of the general proposition 'declares', by this the conclusion that in connection with the friendly gift, it is also a qualifying clause of it or it equally applies to it with a similar reasoning, is set aside by reason of its annulment generally

Mitâkṣarâ

योगक्षेमशब्देन योगक्षेमकारिणोराजमन्त्रिपुरोहितादयउच्यन्ते इति केचित् । छत्रचामरशस्त्रोपानत्प्रभृतयइत्यन्ये । २४ ॥

योगक्षेमशब्देन yogakṣema sabdena, by the word yoga kṣema, योगक्षेमकारिण yogakṣema kârinah those who effect sacrificial and conservatory acts, राजमन्त्रि पुरोहितादय râjamantri purohitâdayah the king's counsellors, the stipendary priests and the others; उच्यन्ते uchyante, are meant इति iti, so, केचित् kechit, some छत्र-चामर शस्त्र उपानत्प्रभृतय chhatra chamara śastra upânat prabhritayah parasols (umbrellas), cowtails, weapons shoes and similar things, उच्यन्ते uchyante, are meant, इति iti, so, अन्ये anye, some others,

24. Some hold that by the compound term yoga kṣema, those who effect sacrificial and conservatory acts, (yoga and kṣema) are intended, as the king's counsellors, the stipendiary priests, and the rest Others say, weapons, cowtails, parasols, shoes, and similar things, are meant.

Bâlambhatta's gloss

24 He now proceeds to give the opinion of Medhâtithi and Kal

pataru ; 'yoga'] : he gives another view : 'parasol']. According to all, the profit arising therefrom even if unequal should be divided Brihaspati says. "The profit arising to the possessor of 'yoga' and 'kṣema' is to be divided equally" ; by reason of possessing 'yoga' and 'kṣema.'

Mitâkṣarâ

प्रचारोगृहारामादिषु प्रवेशनिर्गममार्गः सोऽप्यविभाज्यः ॥ २५ ॥

प्रचारः prachârah, a common way, गृहारामादिषु grihâramadiṣu, in houses and gardens, and other places ; प्रवेशनिर्गममार्गः pravesé-nirgama-mârgaḥ, road of ingress and egress ; सः sah, that ; अपि api, also ; अविभाज्यः avibhâjyah, not to be divided.

25. The common way, or road of ingress and egress to and from the house, garden, or the like, is also indivisible.

Bâlambhatta' gloss'

25. He says that in the word 'common way', there is घञ् affix in the sense of instrumentality under 'And after consonants '(P. III. 3. 121)*

'House'] ; having stated the indivisibility of the road of ingress and egress from the house, garden or the like, it follows that the house, garden or the like are divisible, but he condemns it as being contrary to other smritis.

Mitâkṣrâ.

यत्तूशनसा क्षेत्रस्याविभाज्यत्वमुक्तम्। अविभाज्यं सगोत्राणामासहस्रकुलादपि। याज्यं क्षेत्रं च पत्रं च कृतान्नमुदकं स्त्रियइति तद्ब्राह्मणोत्पन्नक्षत्रियादिपुत्रविषयम्। प्रतिग्रहभूर्देया क्षत्रियादिसुताय वै। यद्यप्येषां पिता दद्यान्मृते विप्रासुतो हरेदिति स्मरणात् २६ ॥

यत् yat, which, as ; तु tu, but ; उशनसा usânasâ, by Usânas ; क्षेत्रस्य kṣetrasya, of a field ; अविभाज्यत्वम् avibhâjyatvam, exclusion from partition ; उक्तम् uktam, is stated ; अविभाज्यम् avibhâjyam, not to be distributed, सगोत्राणाम् sagotrânâm, among kinsmen ; आसहस्रकुलात् âsahasra-kulâd, to the thousand degrees ; अपि api, even ; याज्यम् yâjyam; sacrificial gains ; क्षेत्रम् kṣetram, land ; पत्रम् patram, written document ; or vehicles ; कृतान्नम् kṛtânnam, prepared food ; उदकम् udakam, water ; स्त्रियः striyaḥ, women ; इति iti, so, तद् tad, that ; ब्राह्मणोत्पन्न brâhmaṇo-

* As for further elucidation, see at p. 527 of Panini's Grammar.

utpanna, born of a Brahmana father ; क्षत्रियादि kṣatriyâdi, by women of the kṣatriya (the military) and other inferior classes , पुत्रविषयम् putra viṣayam, in reference to the sons ; न na, not ; प्रतिग्रहभूः pratigrahaḥ-bhûḥ, land obtained by acceptance ; देया deyâ, is to be given ; क्षत्रियादिसुताय kṣatriyâdi-sutâya, to a son born of a kṣatriya or other inferior wife ; वै vai, surely ; यद्यपि yadyapi, even, though; एषाम् eṣâm, to these, or their , पिता pitâ, father ; दद्यात् dadyât, would give ; मृते mṛito, after he (the father) is dead ; विप्रासुतः viprâ-sutaḥ, the son of a Brâhmaṇi ; हरेत् haret, should take away ; इति iti, thus ; स्मरणात् smaraṇât, because it is ordained.

26. The exclusion of land from partition, as stated by Usanas, ("Sacrificial gains, land, written documents, prepared food, water, and women, are indivisible among kinsmen even to the thousandth degree ;") bears reference to sons of Brahmaṇa by women of the military and other inferior tribes : for it is ordained (by Vrihaspati) "Land, obtained by acceptance of donation, must not be given to the son of a kshatriya or other wife of inferior tribe : even though his father give it to him, the son of the Brahmani may resume it, when his father is dead."

Bâlambhatta's gloss.

26 .'As'] Vyâsa also follows the same order; Prajâpati also says that 'sites of the house can not be divided' By this, the discussion in the above said four has been shown ; he sets it aside ;'that'] here, 'and the other' includes a *vaiśya* tribe only but not a *sūdra* as will be shown later on. 'He cites from Brihaspati ; 'na prati'] , the result of the qualifying clause will appear later on ; this by reason of the inherent power of the word relates to the partition made at the option of the father. Therefore in all partitions made at the instance of the sons in the paternal property, its absence is self-evident. He states about the ancestral property , 'here land' therefore, means all landed property and includes agricultural land (holding) by reason of using 'land' only and making a distinction between a gift of a house and that of land ; here ancestral house is not meant. Brihaspati therefore, says, "He who is a son of a woman of a Brahman caste shall inherit the land given as a Brahmana donation , but all who are twice born are entitled to succeed 'to the house property and the ancestral holding." 'Brahmana donation' means gift. So the original text of Madana Pârijâta stated previously should be considered improper It may be said that even by not reconciling the conflict with Vyâsa, the conflict with Prajâpati 'remains intact by reason of the special prohibition as regards the self-acquired house property

other than obtained by charitable gift, in pursuance of the text of Brihaspati. In pursuance of the text of Prajapati in the text of Manu, the terms 'yoga and kṣema' have been probably explained by Medhâtithi as meaning house site, but that refers to a case where it is without the consent of the father. So—

"In the house property and agricultural land (holding) the grand sons and the father are equally entitled, but in the paternal ones the sons have no right to demand partition without the consent of the father." Vyâsa. The statement of Kalpataru to the effect that 'kṣetra (holding) always means house site', is erroneous. Kâtyâyana, therefore, says, 'let the existing house, land and quadrupeds be distributed.' By the difference between them the separation is made; it should be understood that even in the text of Vyâsa it is made.'

Mitâkṣrâ.

याज्यं याजनकर्म लब्धम् ॥ २७ ॥

याज्यम् yâjyam, sacrificial gains; याजनकर्मलब्धम् yâjana karmalabdham, acquired by officiating at religious ceremonies.

27. Sacrificial gains] acquired by officiating at religious ceremonies.

Bâlambhatta's gloss

27. While describing what is exempt from partition, he explains the secondary sense of the word the 'sacrificial gains' used; religious ceremonies']

Mitâkṣrâ.

पितृप्रसादलब्धस्याविभाज्यत्वं वक्ष्यते । नियमातिक्रमस्याविभाज्यत्वमनन्तरमेव निरासि ॥ २८ ॥

पितृप्रसादलब्धस्य pitri-prasâda-labdhasya, of what is obtained through the fathers' favour, अविभाज्यत्वम् avibhâjyatvam, exemption from partition; वक्ष्यते vakṣyate, will be subsequently declared; नियमातिक्रमस्य niyamâtikramasya, of anything acquired by transgressing restrictions regarding the mode of acquisition, अविभाज्यत्वम् avibhâjyatvam, the supposition of indivisibility, अनन्तरम् anantaram, already, एव eva, indeed, just; निरासि nirâsi, is pointed

28. What is obtained through the father's favour, will be subsequently declared exempt from partition. The supposition,

that any thing, acquired by transgressing restrictions regarding the mode of acquisition, is indivisible, has been already refuted.

Bâlambhatta's gloss

28 When the original text writer commenced exempting from partition by saying 'without detriment to the patrimony,' he did not mention all assets, in order to remove this defect in the course of 'partition' he came to remember that which follows 'Through the father's favour', means that also, the original text writer says by the parents etc' first Nârada text has also laid down the same thing, it must be understood as pertaining to the partition at the instance of the sons Here the impartibility (exemption from partition), has been explained by the commentator by positive and negative precepts The positive rule consists in describing the nature of impartibility and the negative rule (prohibition) consists in the refutation of partibility In this state, *though said here, yet useful in the following, he comes to remember it* 'Restriction'] means, for a Brahmana of acceptance of gift etc, 'already' means, the objection that arose in the discussion of the partible property by the propounder of the established truth, 'refuted' prohibited.

Mitâksarâ

पितृद्रव्यविरोधेन यदर्जितं तद्विभजनीयमिति स्थितं तत्रार्जकस्य भागद्वयं वसिष्ठवचनात् । येन चैषां स्वयमुपार्जितं स्याद्द्व्यंशमेव लभेतेति ॥ २९ ।

पितृ द्रव्य विरोधेन pitridravya virodhena, at the expense of the patrimony, यद् yad, what, अर्जितम् arjitam, is acquired तद् tad, that विभजनीयम् vibhajanîyam, is to be divided इति iti so स्थितम् sthitam, is settled, तत्र tatra, in such a case, अर्जकस्य arjakasya of the acquirer, भागद्वयम् bhâgadvayam, is a pair of shares, वसिष्ठवचनात् vasiṣṭha-vachanât, from the passage of Vasistha, येन yena, by whom च cha and, एषां esâm, of these, स्वयम् svayam, by himself, उपार्जितम् uparjitam acquired स्यात् syât, would be, द्व्यंशम् dvyamśam, two parts, a double share एव eva, indeed, लभेत labheta, would obtain इति iti so

29 It is settled, that whatever is acquired at the charge of the patrimony, is subject to partition. But the acquirer shall, in such a case, have a double share, by the text of Vasishtha, "He, among them, who has made an acquisition, may take a double portion of it"

Bâlambhatta's gloss

29 In such a state in order to have a bearing on the following, he

sums up the obvious result previously stated. 'At the charge of the patrimony'] similarly and the rest *in order to be in unison with the general* subject. 'Iatra'] (in such a case) similarly in the earning from the friendly gifts etc, he says the same; 'by whom'] 'among them' among brothers.

Mitākṣarā

अस्यापवादमाह ।

सामान्यार्थे समुत्थाने विभागस्तु समः स्मृतः॥ ३० ॥

अस्य asya, its; अपवादं apvâdam, exception; आह âha, propounds.

सामान्य-अर्थ-समुत्थाने sâmânya-artha-samutthâne, if the common stock, or wealth be improved: विभाग: vibhâgaḥ, division; तु tu, but; समः samaḥ, equal, स्मृतः smṛitaḥ, *is ordained.*

30. The author propounds an exception to that maxim, "But, if the common stock be improved, an equal division is ordained."

Bâlambhatta's gloss.

अस्य'Of this'] of the double share as said by Vasiṣtha, the explanation of the 'common stock.' (*follows*)

Mitākṣarā

अविभक्तानां भ्रातॄणां सामान्यस्यार्थस्य कृषिवाणिज्यादिना संभूय समुत्थाने सम्यग्वर्धने केनचित्कृते समएव विभागोनार्जयितुरंशद्वयम् ॥ ३१ ॥

अविभक्तानाम् avibhaktânâm, among unseparated; भ्रातॄणाम् bhrâtṛinâm, *brothers*; सामान्यस्य sâmânyasya, of the common stock, अर्थस्य arthasya, of the stock; कृषिवाणिज्यादिना kriṣi-vâṇijyâdinâ, by means of agriculture, commerce, or similar *occupations*; संभूय sambhûya, *together*; समुत्थाने samutthâne, on improvement; सम्यग्वर्धते samyagvardhate; on a good augmentation; केनचित् kenachit. by some one; कृते kṛite, done, effected; समः samaḥ, equal; एव eva, indeed; विभागः vibhâgaḥ, division; न na, there is not; अर्जयितुः arjayituḥ, of the acquirer; अंशद्वयम् amśa dvayam. a double share.

31. Among unseparated brethren, if the common stock be

improved or augmented by any one of them, through agriculture, commerce, or similar means, an equal distribution nevertheless takes place ; and a double share is not allotted to the acquirer.

Bâlambhatta's gloss

81. 'Among the unseparated borthren], 'in improving', its explanation, 'thoroughly'], there the reason is assigned ' 'agriculature' for this object, it is said over and above the restrictive rule ; he gives the rest : 'by any one of them,' among the brothers etc.

END OF SEC IV.

SECTION V.

Mitâkṣrâ.

पित्र्ये द्रव्ये तु पुत्राणां विभागोदर्शितः । इदानीं पैतामहे पौत्राणां विभागे विशेषमाह ॥ १ ॥

अनेक पितृकाणां तु पितृतोभागकल्पना ॥ १२० ॥

पित्र्ये pitrye, of the paternal, द्रव्ये dravye, estate ; तु tu, but, पुत्राणाम् putrâṇâm, among sons ; विभाग: vibhâgaḥ, distribution, दर्शित darśitah, is shown ; इदानीम idânim, now ; पैतामहे paitâmahe, concerning grand father's estate, पौत्राणाम् pautrâṇâm, among gransons, विभागे vibhâge, in the matter of distribution, विशेषम् viśeṣam, a special rule; आह Âha, propounds; अनेकपितृकाणाम् aneka pitrikâṇâm, among grandsons by different fathers, तु tu, but, पितृतः pitṛitaḥ; according to the fathers ; भागकल्पना bhâgkalpanâ, the allotment of shares

1. The distribution of the paternal estate among sons has been shown ; the author next propounds a special rule concerning the division of the grandfather's eficets by grandsons;

"Among grandsons by different fathers, the allotment of shares is according to the fathers."

Bâlambhatta's gloss

1 He explains the relevancy of the succeeding. 'Paternal estate' means somehow his own property only ; 'among sons' among them only; similarly in the following ; 'of the grandfather's eff cts' in his only ; 'concerning the division' means by *reason of the accrual of the proprietary* right by birth alone 'By different fathers' *i e* the sons belonging to the different fathers, or the sons of different fathers ; the meaning is that the grandfather is one who has got many sons related to each other as brothers ; the sons of the latter are therefore sons of different fathers. The different reading is 'whose fathers are dead', 'the sons by different fathers' is an incorrect reading

Mitâkṣarâ

यद्यपि पैतामहे द्रव्ये पौत्राणां जन्मना स्वत्वं पुत्रैरविशिष्टं तथापि तेषां पितृद्वारेणैव पैतामहद्रव्ये विभागकल्पना । न स्वरूपापेक्षया । एतदुक्तं भवति । विभक्ता भ्रातरः पुत्रानुत्पाद्य दिष्टं गतास्तत्रैकस्य द्वे पुत्रावन्यस्य त्रयोऽपरस्य चत्वारइति पुत्राणां वैषम्ये तत्र द्वावेकं स्वपित्र्यमंशं लभेते । अन्ये त्रयोऽप्येकमंशं पित्र्यं चत्वारोप्येकमंशं पित्र्यं लभन्तइति । तथा केषुचित्पुत्रेषु ध्रियमाणेषु केषुचित्पुत्रानुत्पाद्य विनष्टेष्वयमेव न्यायो ध्रियमाणाः स्वांशानेव लभन्ते । नष्टानामपि पुत्राः पित्र्यानेवांशाँल्लभन्तइति वाचनिकी व्यवस्था ॥ १२० ॥

यद्यपि yadyapi, although , पैतामहे paitâmahe, over the grandfather's ; द्रव्ये dravye, property ; पौत्राणाम् pautrâṇâm, of the grandsons ; जन्मना janmanâ, by birth ; स्वत्वम् svatvam, proprietary right ; पुत्रैः putraiḥ, with the sons ; अविशिष्टम् aviśiṣṭam, common ; तथापि tathâpi, still ; तेषाम् teṣâm, their ; पितृद्वारेण pitṛ-dvârena, through the father , एव eva, only ; पैतामहे द्रव्ये paitâmahe-dravye, in the grandfather's property ; विभागकल्पना vibhâga kalpanâ, allotment of shares , न na, not ; स्वरूपापेक्षया svarûpapekṣayâ, with reference to themselves ; एतद् etad, this , उक्तम् uktam, expressed , भवति bhavati, is ; विभक्ताः vibhaktâḥ, separated , भ्रातरः bhrâtaraḥ, brothers , पुत्रान् putrân, sons, male issue , उत्पाद्य utpâdya, producing , दिष्टम्-गताः diṣṭam-gatâḥ, die , तदा tadâ, then ; एकस्य ekasya, of one , द्वौ dvau, two ; पुत्रौ putrau, sons ; अन्यस्य anyasya, of the other ; त्रयः trayaḥ, three , पुत्राः putrâḥ, sons , अपरस्य aparasya, of another one ; चत्वारः chatvâraḥ, four ; इति iti, so, thus ; पुत्राणाम् वैषम्ये putrâṇâm vaiṣamye, in case there is an inequality of sons ; तत्र tatra, there, in that case ; द्वौ dvau, two ; एकम् ekam, one, whole only. स्वपित्र्यम् sva pitryam, of their

own father, अंशम् amsam, share, लभेते labhete, obtain, अन्ये anye, other, त्रयः trayaḥ, three, अपि api, also, एकम् ekam, one अंशम् amsam, share, पित्र्यम् pitryam, the father's, चत्वारः chatvârah, the four, अपि api, also, एकम् ekam, one, अंशम् amsam, share पित्र्यम् pitryam father's, लभन्ते labhante, obtain, इति iti, so तथा tathâ, similarly, केषुचित् kesu chit, some; पुत्रेषु putreṣu, sons ध्रियमाणेषु dhriyamâneṣu if they be living, केषुचित् keṣu chit, some, पुत्रान् putran, sons, उत्पाद्य ut, â lya, producing, विनष्टेषु vinaṣtesu, if they be dead, अयम् ayam, this एव eva, indeed, न्याय nyâyah, rule, ध्रियमाणाः dhriyamânâh the living ones, स्वांशान् svâm śân, their own shares एव eva, only, लभन्ते labhante, obtain, नष्टानाम् nastânam, of those that are dead, अपि api, even, पुत्राः putrâh, sons, पित्र्यान् pitryân, paternal, एव eva, only, अंशान् amśâm, shares, लभन्ते labhante, obtain, इति iti, thus, such, वाचनिकी vâchanikî, prescribed by the text, व्यवस्था vyavasthâ, the adjustment

2. Although grandsons have by birth a right in the grandfather's estate, equally with sons, still the distribution of the grandfather's property must be adjusted through their father, and not with reference to themselves. The meaning here expressed is this if unseparated brothers die, leaving male issue, and the number of sons be unequal, one having two sons, another three, and a third four, the two receive a single share in right of their father, the other three take one share appertaining to their father, and the remaining four similarly obtain one share due to their father. So, if some of the sons be living and some have died leaving male issue; the same method should be observed the surviving sons take their own allotments, and the sons of their deceased brothers receive the shares of their own fathers respectively. Such is the adjustment prescribed by the text.

Bâlambhatta s gloss

2, [He explains it fully along with objections, 'although'] he says by reason of the ending in the instrumental case the affix is tasi which applies in all declensions Through their father only] 'only' is in the sense of 'but', the meaning is that the text is restrictive, he further gives the reverse (as contrast) 'not with reference to themselves' not per head (*per capita*) He gives the result, 'this] 'unseparate] m for distinction, 'there' among brothers In order to remedy the defect, he applies the said principle elsewhere so], 'living', in existence or while alive, derived from ✓ dhri' to remain, Kâtya

yana has said so, "On the death of the unseparated son, his son is entitled to his share so that he may carry on his livelihood if he has not been provided for He gets the share of his father from the uncle or his son a share to which other brothers are equitably and justly entitled or he gets it from his son so that there may be satisfaction" He says prescribed by the text' otherwise there will be meaninglessness, so it is a restrictive rule This is the *meaning*

Kalpataru thinks that it includes the sons begotten on one woman by many Vishnu in the course of the explanation says "Of those who are of different fathers, the share is *per stirpes*, he gets the share of his father but not of any other"

Brihaspati therefore, says, " If the '*aurasa*' and '*ksetraja*' sons *are the inheritors of one father, they get the share of the father but of* no other "

Here the term '*ksetraja*' does not mean the son as defined, since he is entitled to another share to be mentioned *hereafter* but every illegitimate son "If two who are born from two fathers but one woman, claim the property, they get the property of their respective fathers but not of the other" Manu 9-191

Mitâkşrâ

अधुनाविभक्ते पितर्यविद्यमानभ्रातृके वा पौत्रस्य पैतामहे द्रव्ये विभागोनास्ति अध्रियमाणे पितरि पितृतोभागकल्पनेत्युक्तत्वात् । भवतु वा स्वार्जितवत् पितुरिच्छयैवेत्याशङ्कितमाह

भूर्या पितामहोपात्ता निबन्धोद्रव्यमेव च ।
तत्र स्यात्सदृशं स्वाम्यं पितुः पुत्रस्य चैव हि ॥१२१॥

अधुना adhunâ, now, विभक्ते vibhakte, if separate, पितरि pitari be the father अविद्यमानभ्रातृके avidyamânabhrâtrike, if he has no brothers, वा vâ, or, पौत्रस्य *pautrasya, of the grandson* पैतामहे *paitâmahe, paitamahe, in* the grand fathers', द्रव्ये dravye, wealth, विभागः vibhâgah share, न na, not अस्ति asti, there is अध्रियमाणे adhriyamâņe, if he be deceased; पितरि pitari, if the father, पितृतः pitŗtah, through the father, in right of the father, भागकल्पना bhâga-kalpanâ, the allotment of shares, इति iti so, उक्तत्वात् uktatvât, it being directed; भवतु bhavatu, let it be वा vâ or स्वार्जितवत् svârjitavât like a distribution of his own acquisitions, पितुः pituh, of the father; इच्छया ichhayâ, according to the pleasure, एव eva, only, indeed, इति iti, so, आशङ्कित âśankitah doubting, to obviate this doubt; आह âha the author says, भूः bhûh 'and, या yâ, which, पितामहोपात्ता pitamahopâttâ,

acquired by the grand father निबन्ध nibandhah, corrody, द्रव्यम dravyam, chattels, एव eva, also, च cha, and, तत्र tatra, in that, in all these, स्यात् syât, should be सदृशम् sadr śam, the same स्वाम्यम् svâ nyam, ownership, पितुः pitah, of the father, पुत्रस्य putrasya of the son, च cha, and, एव eva, indeed, also, हि hi, for

8 A rice field or other ground. A corrody. So many leaves receivable from a plantation of betle pepper, or so many nuts from an orchard of areca, Chattel, Gold, silver, or other movables.

Bâlambhatta's gloss

8 From 'sons of different fathers' but not from other, it follows that a grandson gets the property through his father but not himself (per sterpe but not per capita), there too by reason of the right coming to an end on the death of the unseparated father on account of the non-creation of the right by partition and by reason of the obstruction of the proprietary right So the right of the grandson is also like the obstructed heritage of the brothers, in this view what is said above is erroneous Further in such a state, (e g) the father is alive and is separate from his father or by reason of being an only son of his father in the absence of other brothers lives with him unseparate In the former case, by reason of being separate, he does not get a share because the father is separate and there is obstruction to inheritance by his existence, the grandson does not get a share in his grandfather's property In the second case also, though his father gets the property by being undivided but he does not get it by reason of his existence The result is that a grandson has never a share in the grand father's property while his father is alive In order to reply to the objection, he gives the following passage, 'Now' the connection is, when the objection is raised, *'separate'* is in contrast The 'grandson' stands for ('includes') two grandsons many grandsons In both cases he gives reasons, 'not in existence' means 'on death', if the reading is 'in existence' it is connected with the previous, in 'not father' is in the contrast, in his absence, he means that here in both cases, the father exists

No, it is not proper because having said that the proprietary right accrues on birth, but does not depend on any other cause, the right to partition is proper in such a case, if that is so then prescribing the right to partition to accrue or the death of the father, it is well established that his right depends on him while he is alive As the father appears to be principal, the partition depends on the will of the father There he gets double share as in the self acquisitions, according to the text of Nârada the father's share is double So he says 'or admitting', 'partition' comes as an ellipsis, 'but' is understood subsequently 'According to the pleasure of the father', and according to the pleasure

of the father may be understood, there by 'iti' he gives it as suggesting an illustration in the case of "bhavan' being the reading it is the unity of a sentence

Mitâksarâ.

भूः शालिक्षेत्रादिका । निबन्धः एकस्य पर्णभारकस्येयन्ति पर्णानि । तथा एकस्य क्रमुकफलभारकस्येयन्ति क्रमुकफलानीत्याद्युक्तलक्षणः । द्रव्यं सुवर्णरजतादि । ४ ॥

भूः 'bhûh, land, शालिक्षेत्रादिका sâlikşetrâdikâ, a rice field or the like, निबन्धः nibandhah, corrody, (incour), एकस्य ekasya, of one, पर्णभारकस्य parnabhârakasya of the plantation of a betle papper, इयन्ति iyanti, so many पर्णानि parnani, leaves (to be received), तथा tathâ, similarly, एकस्य ekasya, of one, क्रमुक फल-भारकस्य kramuka phala bhârakasya, of an orchard of areca, इयन्ति iyanti, so many, क्रमुकफलानि kramuka phalâni, areca nuts, इत्यादि ityadi, this and the like, उक्तलक्षणः ukta laksanah, whose characteristics are spoken to be, द्रव्यम् dravyam, chattels, सुवर्ण-रजत-आदि suvarna-rajata âdi, gold, silver and other movables

1 If the father, be alive, and separate from the grandfather, or if he have no brothers, a partition of the grandfather's estate with the grandson would not take place, since it has been directed, that shares shall be *allotted, in right of the father*, if he be deceased or, admitting partition, to take place, it would be made according to the pleasure of the father, like a distribution of his own acquisitions - to obviate this doubt the author says "*For the ownership of the father and the son is* the same in land, which was acquired by the grandfather, or in a corrody, or in chattels (which belonged to him)

Bâlambhatta's gloss

1 He gives the accepted meaning by virtue of the inherent power of the words 'Rice field'], and other, barley field in order to distinguish it from the building site etc the subject relating to the building site will be made clear later on Whatever is fixed by counting of leaves etc is corrody which is a means of livelihood royal grant of mines receivable permanently, he gives its description 'Of one', where there is a collection of leaves it is a compound word similarly in the following one That there are so many betel leaves or betel nuts in a particular betel grove or a betel nut grove is known to an expert therein but to no other by the approximate counting or ascertaining

thereof, it is fixed Whatever is so fixed by the grandfather, in order to show connection with the following, he says

Mitâkshara

यत्पितामहेन प्रतिग्रहविजयादिना लब्धं तत्र पितुः पुत्रस्य च स्वाम्यं लोकप्रसिद्ध मिति कृत्वा विभागोऽस्ति । हियस्मात्तत्सदृश समानम् । तस्मान्न पितुरिच्छयैव विभागो नापि पितुर्भागद्वयम् । ५ ॥

यत् Yat, which, पितामहेन pitâmahena, by the grand father प्रतिग्रह-विजयादिना pratigraha vijayâ adinâ by means of acceptance conquest or through similar channels, लब्धम् labdham, acquired तत्र tatra in such property, पितुः pituh, of the father पुत्रस्य putrasya, of the son च cha, and, स्वाम्यम् svamyam, the ownership, लोक प्रसिद्ध loka prasiddham is notorious, इति iti, so, कृत्वा kritvâ, thinking, doing विभाग vibhagah, partition, अस्ति asti, there is, हि hi, for (means) यस्मात् yasmât, since, तत् tat, that right, सदृशम् sadrisam, equal (means) समानम samânam, alike तस्मात् tasmâd, therefore, न nâ, not, neither पितुः pituh, of the father इच्छया ichchhayâ, according to the pleasure एव eva, indeed, विभाग vibhagah partition, न अपि na api, nor, not also, पितुः pituh, the father s भागद्वय bhâgadvayam double share

5. In such property, which was acquired by the paternal grandfather, through acceptance of gifts, or by conquest or other means, (as commerce, agriculture or service,) the ownership of father and son is notorious and therefore partition does take place. For, or because, the right is equal, or alike, therefore, partition is not restricted to be made by the father s choice nor has he a double share.

Bâlambhatta s gloss

5 'Whatever by the grand father' he now says over and above the rules, 'through acceptance' 'and other', acceptance of income from commerce and service of the twice born After setting forth the three things under the first half of the stanza he now fully explains the remaining half with the split of a sentence and filling up the ellipsis, 'there', in all the three, he gives the meaning as previously, 'does take place' being connected with the preceding passage means has a right' In order to be in conformity with the reading and of both according to Kalpataru etc, he says 'for or because', 'equal' equal only by reason of

the connection with the following, he says the rest like the preceding; therefore 'there is no partition at the option', is a better reading; by this, the equal partition is suggested.

Brihaspati also says. In the immovable and movable property acquired by the grand father, the son and the father have been declared to have equal right

Mitâkṣarâ

अतः पितृतोभागकल्पनेत्येतत्स्वाम्ये समेऽपि वाचनिकम् । ६ ॥

अतः atah, hence; पितृतः pitṛitaḥ, according to the father's, भाग-कल्पना bhâga-kalpanâ, the allotment of shares, इति iti, so, thus; एतत् etat, this (text) स्वाम्ये svâmye the right; समे same, equal; अपि api, even though; वाचनिकम् vâchanikam, text.

6. Hence also it is ordained by the preceding text, that "the allotment of shares shall be according to the father's" although the right be equal.

Bâlambhatta' gloss

6 In this state, to remove the futility which is shown by the first part and its contradiction, he strengthens the said scriptural quotation. Hence'], the meaning is because the equal proprietary right of the father and the son therein is well known, therefore......ordained by the preceding text]. it is so ordained when the father is dead but not when he is alive, the reading 'of those whose father is dead' is, therefore, preferable; it is said previously also

Mitâkṣarâ

विभागं चेत्पिता कुर्यादित्येतत्स्वार्जितविषयं । तथा द्वावंशौ प्रतिपद्येत विभजन्नात्मनः पितेत्येतदपि स्वार्जितविषयं । जीवतोरस्वतन्त्रः स्याज्जरयापि समन्वित इत्येतदपि पारतन्त्र्यं मातापित्रर्जितद्रव्यविषयं । तथा अनीशास्ते हि जीवतोरित्येतदपि ॥७॥

विभागम् vibhâgam, the partition, चेत् chet, if; पिता pitâ, the father; कुर्यात् kuryât, would do, इति एतत् iti etat, thus this, स्वार्जितविषयम् sva-arjita-viṣayam, is as regards the property acquired by the father himself, तथा tathâ, so, द्वौ dvau, two, अंशौ aṁśau, shares, प्रतिपद्येत pratipadyeta, would reserve, विभजन् vibhajan, making a partition; आत्मनः âtmanaḥ, for himself, पिता pitâ, the father, इति-एतद् iti etad, thus, this; अपि api, too, स्वार्जित विषयम् sva-arjita viṣayam, is such as regards the

distribution of his own acquisitions, जीवतोः jîvatoh, while both are living, अस्वतन्त्रः asvatantrah, not free, dependent, स्यात् syât, should be must be, जरया jarayâ, by old age, अपि api even though समन्वितः samanvitah, accompanied by, arrived at (old age) इति-एतद् iti etad, thus this, अपि api, too, पारतन्त्र्यम् pâratantryam, dependence, माता-पित्रार्जित द्रव्य-विषयम् mâtâ-pitrârjita dravya vishayam, must relate to effects acquired by the father or mother तथा tathâ similarly, अनीशा anîśâh, powerless, having no power, ते te, they हि hi, for or truly जीवतो jîvatoh, while both (the parents) are living, इति एतद् iti etad, thus, this, अपि api, too

7. The first text, "When the father makes a partition, "etc" (Sect 2 and 1) relates to property acquired by the father himself. So does that which ordains a double share "Let the father, making a partition, reserve two shares for himself" The dependence of sons, as affirmed in the following passage, "while both parents live, the control remains, even though they have arrived at old age, must relate to effects acquired by the father or mother. This other passage, "They have not power over it (the paternal estate) while their parents live" must be referred to the same subject

Bâlambhatta's gloss

7 He removes the contradiction from other text that arises from the second part 'When the father makes a partition'], it is also explained previously He removes the contradiction that arises from the third part with the other text not explained previously, so'] he cites Nârada, 'two shares', reservation is the taking or keeping in accordance with the rule Of himself' it may be either 6th or 5th form of declension The meaning is that this unequal partition happens by reason of the absence of any special customary law Similarly the unequal partition under the text of Vasiṣtha stated above should be understood So it is established that the person earning shall get two shares in his self acquisitions in case of total partition Same' he cites two views reconciling the conflict with other texts in this way while both parents live] the mother is also included The result is the same as said as regards the ancestral property by reason of the original text pertaining to the paternal acquisitions

Mitâkṣara

तथा च सरजस्कायां मातरि सस्पृहे च पितरि विभागमनिच्छत्यपि पुत्रेच्छया

पैतामहद्रव्यविभागो भवति ॥ ८ ॥

तथा tathâ, similarly ; च cha, and ; सरजस्कायाम् sarajaskâyâm, being capable of producing more sons मातरि mâtari, mother ; सस्पृहे saspṛihe, retaining worldly affections , च cha and पितरि pitari, the father ; विभागम् vibhâgam, partition , अनिच्छति anichchhati, not deserving ; api, though , अपि पुत्रेच्छया putrechchhayâ, at the pleasure of the sons , पैतामहद्रव्य विभागः *paitâmaha-dravya vibhâgaḥ, the partition of the grandfather's* estate ; भवति bhavati, does take place.

8. Thus, while the mother is capable of bearing more sons, and the father retains his worldly affections and does not desire partition, a d s ribution of the grandrather's estate does nevertheless take place by the will of the son,

Bâlambhatta's gloss

8. He gives the special rule , 'thus' means when their proprietary right is equal He gives the special rule arising from the absence of the three periods or partition during the lifetime of the father 'capable of bearing more sons'] , 'by even' (api), all the three reasons are joined together , by the will of the son', oy it only , the will plays the principal part.

Mitâkṣarâ.

तथा विभक्तेन पित्रा पैतामहे द्रव्ये दीयमाने विक्रीयमाणे वा पौत्रस्य निषेधेऽप्यधिकारः । पित्रार्जिते तु न निषेधाधिकारः । तत्परतन्त्रत्वात् । अनुमतिस्तु कर्तव्य ॥ ९ ॥

तथा tathâ, similarly, like-wise ; अविभक्तेन avibhaktena, by the unseparated ; पित्रा pitrâ, father, पैतामहे paitâmahe, with the grandfather's द्रव्ये dravye estate, दीयमाने diyamâne, is being given, विक्रीयमाणे vikrîyamâṇe, *is* being sold , वा vâ or , पौत्रस्य pautrasya, of the grandson, the grandson has , निषेधे niṣedhe, of prohibition , अपि api, also , अधिकारः adhikâraḥ, the right , पित्रर्जिते pitrarjite, if it be acquired by the father , तु tu, but , न na, no ; निषेधाधिकारः niṣ-dhâdhikâraḥ, right of prohibition ; तत्परतन्त्रत्वात् tat-para-tantra trât, because he is dependent (the son) on him (the father) अनुमतिः anumatiḥ, acquiescence , tu, but कर्तव्य kartavya, must be made.

9. So likewise, the grandson has a right of prohibition if his unseparated father is making a donation, or a sale, of effects inherited from the grandfather : but he has no right of inter-

ference, if the effects were acquired by the father on the contrary, he must acquiesce, because he is dependent

Bâlambhatta's gloss

9 He therefore, gives another special rule, 'so', similarly, by the unseparated' is in contradistinction because on separation the proprietary right being extinguished, there is no right(to) prohibit alienation by this the explanation by Medhâtithi and others that the self-acquisition, are by means of learning and heroic exploits is reputed The lost ancestral property recovered by the father with his ability and whatever is obtained by learning and heroic exploit is the property of the father", by api (even) the partition is also included, 'should be given' by the son.

Mitâksarâ

तथाहि। पैतृके पैतामहे च स्वाम्यं यद्यपि जन्मनैव तथापि पैतृके पितृपरतन्त्रत्वात् पितुः स्वार्जकत्वेन प्राधान्यात् पित्रा विनियुज्यमाने स्वार्जिते द्रव्ये पुत्रेणानुमतिः कर्तव्य। पैतामहे तु द्वयोः स्वाम्यमविशिष्ट मिति निषेधाधिकारोऽप्यस्तीति विशेषः। १० ॥

कर्तव्या kartavyâ, must be made, तथाहि tathâhi, consequently, पैतृके paitrike, in the paternal, पैतामहे paitâmahe, in the grandfather, च cha, and, स्वाम्यम् svâmyam, right, यद्यपि yadyapi, although, जन्मना janmanâ, by birth, एव eva, only, तथापि tathâpi, still yet पैतृके paitrike, in the paternal, पितृपरतन्त्रत्वात् pitri paratantratvât, because of the dependence of one's father, पितुः pitoh, the father's, स्वार्जकत्वेन svârjakatven, by right of his being the acquirer, प्राधान्यात् prâdhânyât, because of the predominance of (the father), पित्रा pitrâ, by the father, विनियुज्यमाने viniyujyamane, while it is being disposed of, स्वार्जिते svarjite, acquired by himself, द्रव्ये dravye, the wealth, पुत्रेण putrena, by the son, अनुमति anumatih, acquiescence, kartavyâ, should be made, पैतामहे paitamahe, in the grandfather's, तु tu, but, द्वयोः dvayoh, of both, स्वाम्यम् svâmyam, there is the right; अविशिष्टम् aviśistam, indiscriminately, इति iti, hence, therefore, निषेधाधिकारः nisedhâdhikârah the right of prohibition, अपि api, also, too, अस्ति asti, there is, इति iti, thus, is the विशेष visesah speciality

10 Consequently the difference is thus although he have a right by birth in his father's and in his grandfather's property; still, since he is dependent on his father in regard to the paternal estate, and since the father has a predominant interest as it was

acquired by himself, the son must acquiesce in the father's disposal of his own acquired property · but, since both have indiscriminately a right in the grandfather's estate, the son has a power of interdiction (if the father be dissipating the property)

Bālambhatta's gloss

10 He develops the last said with a reason, as for instance], by birth' 'the same' is understood, father' of the son etc, here he says by reason of another' not earning anything 'Both'] a mother has therefore no share in the ancestral property for want of proprietary right and authority. It should be understood that it is proper that the grandsons have unobstructed heritage as said previously

Mitākṣarā

मनुरपि । (अ ९ श्लो २०९) पैतृकं तु पिता द्रव्यमनवाप्तं यदाप्नुयात् । न तत्पुत्रैर्भजेत्सार्धमकामः स्वयमर्जितमिति । यत्पितामहार्जितं केनाप्यपहृतं पितामहेनानुद्धृतं यदि पितोद्धरति तत्स्वार्जितमिव पुत्रैः सार्धमकामः स्वयं न विभजेदिति वदन् पि

मनुः manuh, Manu, अपि api, too, पैतृकम् paitrikam paternal, तु tu, but, पिता pitā, the father, द्रव्यम् dravyam, wealth, अनवाप्तम् anavāptam, not recovered, यद् yad, which आप्नुयात् āpnuyāt, would recover न na, not, तत् tat, that पुत्रैः putraih, (with) the sons; भजेत् bhajet, would divide, सार्धम् sārdham, with, अकामः akāmah, if reluctant, स्वयम् svayam by himself, अर्जितम् arjitam acquired इति iti, so thus being the father, यत् yat, which, पितामहार्जितम् pitāmahārjitam, acquired by the father and (ancestor), केनापि kena api by some one, अपहृतम् apahṛtam taken away, पितामहेन pitāmahena, by grandfather, अनुद्धृतम् anuddhṛtam, the ancestor the grandfather not redeemed यदि yadi, if पिता pita, the father, उद्धरति uddharati, recovers, तत् tat, that, स्वार्जितम् svarjitam, own acquisition, इव iva, like, पुत्रैः putraih, sons, सार्धम् sārdham, with, अकामः akamah not willing, स्वयम् svayam, himself, न na, not, विभजेत् vibhajet, should divide; इति iti, so वदन् vadan, saying, पितामहार्जितम् pitāmahārjitam the grandfathers' acquisition, अकामः akāmah not willing, अपि api, even though, पुत्रेच्छया putrecchayā, at the pleasure of the sons पुत्रैः putraih, sons, सह saha with, विभजेत् vibhajet it, should divide, इति iti so दर्शयति darśayati, shows.